LIST OF AMENDMENTS TO THE CALIFORNIA RULES OF COURT AND STANDARDS OF JUDICIAL ADMINISTRATION

Adopted by the Judicial Council of California on October 21, 2003, effective January 1, 2004

Rule 12.5. Sealed records

(a) Application

This rule applies to sealed records and records proposed to be sealed on appeal and in original proceedings under rule 56, but does not apply to records required to be kept confidential by law.

(b) Definitions

(1) "Record" means all or part of a document, paper, exhibit, transcript, or other thing filed or lodged with the court.

(2) A "sealed" record is a record closed to public inspection by court order.

(3) A "lodged" record is a record temporarily deposited with the court but not filed.

(c) Record sealed by the trial court

If a record sealed by the trial court is part of the record on appeal:

(1) The sealed record must be filed under seal in the reviewing court and remain sealed unless that court orders otherwise under (f).

(2) The record on appeal must include:

(A) the motion or application to seal;

(B) all documents filed in the trial court supporting or opposing the motion or application; and

(C) the order sealing the record.

(3) The reviewing court may examine the sealed record.

(Subd (c) amended effective January 1, 2004.)

(d) Record not sealed by the trial court

A record filed or lodged publicly in the trial court and not ordered sealed by that court must not be filed under seal in the reviewing court.

(e) Record not filed in the trial court; motion or application to file under seal

(1) A record not filed in the trial court may be filed under seal in the reviewing court only by order of that court; it must not be filed under seal solely by stipulation or agreement of the parties.

(2) To obtain an order under (1), a party must serve and file a motion or application in the reviewing court, accompanied by a declaration containing facts sufficient to justify the sealing. ~~With that motion~~ At the same time, the party must lodge the record under (3), unless good cause is shown not to lodge it.

(3) To lodge a record, the party must put the record in ~~a manila~~ an envelope or other appropriate container, seal it, and attach a cover sheet that complies with rule 44(d) and labels the contents as "CONDITIONALLY UNDER SEAL."

(4) If necessary to prevent disclosure, ~~the~~ any motion or application, any opposition, and any supporting documents must be filed in a public redacted version and lodged in a complete version conditionally under seal. Unless the court orders otherwise, any party that already possesses copies of the records to be placed under seal must be served with a complete, unredacted version of all papers as well as a redacted version.

(5) On receiving a lodged record, the clerk must note the date of receipt on the cover sheet and retain but not file the record. The record must remain conditionally under seal pending determination of the motion or application.

(6) The court may order a record filed under seal only if it makes the findings required by rule 243.1(d)–(e).

(7) If the court denies the motion or application, the clerk must not place the lodged record in the case file but must return it to the ~~moving~~ submitting party unless that party notifies the clerk in writing within 10 days after the order denying the motion or application that the record is to be filed.

(8) An order sealing the record must direct the sealing of only those documents and pages or, if reasonably practical, portions of those documents and pages, that contain the material that needs to be placed under seal. All other portions of each document or page must be included in the public file.

(9) Unless the sealing order provides otherwise, it prohibits the parties from disclosing the contents of any materials that have been sealed in any subsequently filed records or papers.

(Subd (e) amended effective January 1, 2004; previously amended effective July 1, 2002.)

(f) Unsealing a record in the reviewing court

(1) A sealed record must not be unsealed except upon order of the court.

~~(1)~~(2) Any person or entity may serve and file a motion, application or petition in the reviewing court to unseal a record. If necessary to preserve confidentiality, the motion, application, or petition, any opposition, and any supporting documents must be filed in both a public redacted version and a sealed complete version.

~~(2)~~(3) If the reviewing court proposes to order a record unsealed on its own motion, the court must mail notice to the parties. Any party may serve and file an opposition within 10 days after the notice is mailed or within such time as the court specifies. Any other party may file a response within 5 days after the filing of an opposition.

(4) In determining whether to unseal a record, the court must consider the matters addressed in rule 243.1(c)–(e).

(5) The order unsealing a record must state whether the record is unsealed entirely or in part. If the court's order unseals only part of the record or unseals the record only as to certain persons, the order must specify the particular records that are unsealed, the particular persons who may have access to the record, or both. If, in addition to the records in the envelope or container, a court has previously ordered the sealing order, the register of actions, or any other court records relating to the case to be sealed, the unsealing order must state whether these additional records are unsealed.

(Subd (f) amended effective January 1, 2004.)

(g) References to nonpublic material in public records prohibited

A record filed publicly in the reviewing court must not disclose material contained in a record that is sealed, lodged conditionally under seal, or otherwise subject to a pending motion to file under seal.

Rule 12.5 amended effective January 1, 2004; repealed and adopted effective January 1, 2002; previously amended effective July 1, 2002.

Rule 14. Contents and form of briefs

(a) ***

(b) [Form]

(1)–(9) ***

(10) The cover, preferably of recycled stock, must be in the color prescribed by rule 44.5(c) and must state:

(A)–(C) ***

(D) the name, address, telephone number, and California State Bar number of each attorney filing or joining in the brief, but the cover need not state the bar number of any supervisor of the attorney responsible for the brief; and

(E) the name of the party that each attorney on the brief represent~~s;~~ ~~and~~.

~~(F) in an unfair competition proceeding to which Business and Professions Code section 17209 applies, the following notice: "Unfair competition case. (See Bus. & Prof. Code, § 17209, and Cal. Rules of Court, rule 15(e)(2).)"~~

(Subd (b) amended effective January 1, 2004.)

(c)–(e) ***

Rule 14 amended effective January 1, 2004; repealed and adopted effective January 1, 2002.

Rule 15. Service and filing of briefs

(a)–(b) ***

(c) Service ~~on superior court clerk~~

(1) A copy of each brief must be served on the superior court clerk for delivery to the trial judge.

(2) Five copies of each brief filed in a civil appeal must be served on the Supreme Court.

(3) A copy of each brief must be served on a public officer or agency when required by rule 44.5.

(Subd (c) amended effective January 1, 2004.)

~~**(d) Service on Supreme Court**~~

~~Five copies of each brief filed in a civil appeal must be served on the Supreme Court.~~

(Subd (d) repealed effective January 1, 2004.)

~~**(e) Service on Attorney General and district attorney**~~

~~(1) A brief for the State of California, a county, or an officer whom the Attorney General may lawfully represent must be served on the Attorney General:~~

~~(A) in all criminal cases;~~

~~(B) in all cases in which the state or a state officer in his or her official capacity is a party; and~~

~~(C) in all cases in which a county is a party, unless the county's interest conflicts with that of the state or a state officer in his or her official capacity.~~

~~(2) In an unfair competition proceeding to which Business and Professions Code section 17209 applies, each brief must be served on the Attorney General and on the district attorney of the county in which the action was filed. The brief must be served within three~~

~~days of its filing, unless the presiding justice extends that period for good cause.~~

(Subd (e) repealed effective January 1, 2004.)

Rule 15 amended effective January 1, 2004; repealed and adopted effective January 1, 2002; previously amended effective January 1, 2003.

Advisory Committee Comment ~~(2002)~~(2004)

Revised rule 15 is former rule 16, without the provisions of former rule 16(a) governing the time for filing combined briefs in an appeal in which a party is both an appellant and a respondent; those provisions have been moved to a new rule devoted to such appeals (revised rule 16).

Subdivision (b). ***

Subdivision (c). Revised subdivision (c)(1), like former rule 16(b), provides that one copy of each brief must be served on the superior court clerk, who must in turn deliver it to the trial judge. But the former provision also declared that the clerk "need not maintain a copy in the [superior] court file." Subdivision (c) of revised rule 15 deletes this declaration as an unnecessary directive to the clerk.

~~Subdivision (d).~~ Revised subdivision ~~(d)~~(c)(2) restates in a more appropriate place a requirement of rule 44(b)(2)(ii). In the revised rule-as in the former rule-the word "brief" means only (1) an appellant's opening brief, (2) a respondent's brief, (3) an appellant's reply brief, (4) a petition for rehearing, (5) an answer thereto, or (6) an amicus curiae brief. It follows that no other documents or papers filed in the Court of Appeal, whatever their nature, should be served on the Supreme Court. Further, in the revised rule-as in the former rule-only briefs filed in the Court of Appeal "in a civil appeal" must be served on the Supreme Court. It follows that no briefs filed in the Court of Appeal in criminal appeals or in original proceedings should be served on the Supreme Court. These are not substantive changes.

~~**Subdivision (e).** Revised subdivision (e)(2) is former rule 16(d) (eff. July 1, 2000). The second sentence of the revised subdivision states the rule of *Californians for Population Stabilization v. Hewlett-Packard Co.* (1997) 58 Cal.App.4th 273, 282-285.~~

Rule 25. Rehearing

(a) ***

(b) Petition and answer

(1) A party may serve and file a petition for rehearing within 15 days after:

(A) the filing of the decision;

(B) a publication order restarting the finality period under rule 24(b)(5), if the party has not already filed a petition for rehearing;

(C) a modification order changing the appellate judgment under rule 24(c)(2); or

(D) the filing of a consent under rule 24(d).

(2) ~~Any answer to the petition must be served and filed within 8 days after the petition is filed.~~ A party must not file an answer to a petition for rehearing unless the court requests an answer. The clerk must promptly send to the parties copies of any order requesting an answer and immediately notify the parties by telephone or another expeditious method. Any answer must be served and filed within 8 days after the order is filed unless the court orders otherwise. A petition for rehearing normally will not be granted unless the court has requested an answer.

(3) The petition and answer must comply with the relevant provisions of rule 14.

(4) Before the decision is final and for good cause, the presiding justice may relieve a party from a failure to file a timely petition or answer.

(Subd (b) amended effective January 1, 2004.)

(c)–(d) ***

Rule 25 amended effective January 1, 2004; repealed and adopted effective January 1, 2003.

Advisory Committee Comment (~~2003~~ 2004)

Revised rule 25 is derived from former rule 27.

Subdivision (a). ***

Subdivision (b). The provisions of revised rule 25(b)(1)~~, (2),~~ and (3) are derived from subdivisions (b)~~, (c),~~ and (d), respectively, of former rule 27.

Former rule 27(b) provided only that a petition for rehearing could be filed within 15 days after the filing of the decision. In a substantive change, revised rule 25(b)(1) provides that a petition for rehearing may also be filed within 15 days after a postfiling order of the Court of Appeal publishing its opinion, a modification order changing the appellate judgment, or the filing of a consent to an increase or decrease in the amount of a money judgment; all are events that restart the 30-day finality period under revised rule 24. However, a party that has already filed a petition for rehearing may not file a second petition for rehearing after a publication order. (Revised subd. (b)(1)(B).)

~~Revised~~ Subdivision (b)(2), as revised in 2004, changes the ~~time for filing an answer to a petition for rehearing from 23 days after the *decision* is filed to 8 days after the *petition* is filed. It is not intended to be a substantive change: in the common situation in which the petition is filed on the 15th day after the decision is filed, the time to file the answer will be the same under both the former and revised rules. The change achieves a uniform rule governing the time to file an answer, whether the petition for rehearing is filed within 15 days after the decision or at a later time, e.g., after a modification of the appellate judgment or a postfiling publication order~~ procedures related to answers to petitions for rehearing. Instead of authorizing the filing of answers in all cases, this revised rule permits answers to be filed only when the court requests them.

Revised subdivision (b)(4) restates a provision of rule 45(c).

Subdivision (c). ***

Subdivision (d). ***

Rule 28. Petition for review

(a) Right to file a petition, answer, or reply

(1)~~–~~(2) ***

(3) The petitioner may file a reply ~~only if~~ to the answer ~~raises additional issues for review~~.

(Subd (a) amended effective January 1, 2004.

(b)–(e) ***

(f) Additional requirements

(1)~~–~~(2) *******

(3) ~~In an unfair competition proceeding to which Business and Professions Code section 17209 applies, the petition must also be served as required by rule 15(e)(2).~~ A copy of each brief must be served on a public officer or agency when required by statute or by rule 44.5.

(4) *******

(Subd (f) amended effective January 1, 2004.)

(g) ***

Rule 28 amended effective January 1, 2004; repealed and adopted effective January 1, 2003.

Rule 28.1. Form and contents of petition, answer, and reply

(a) ***

(b) Contents of a petition

(1) The body of the petition must begin with a concise, nonargumentative statement of the issues presented for review, framing them in terms of the facts of the case but without unnecessary detail.

(2) The petition must explain how the case presents a ground for review under rule 28(b).

(3) If a petition for rehearing could have been filed in the Court of Appeal, the petition for review must state whether it was filed and, if so, how the court ruled.

(4) If the petition seeks review of a Court of Appeal opinion, a copy of the opinion showing its filing date and a copy of any order modifying the opinion or directing its publication must be bound at the back of the original petition and each copy filed in the Supreme Court.

(5) The title of the case and designation of the parties on the cover of the petition must be identical to the title and designation in the Court of Appeal opinion or order that is the subject of the petition.

(6) Rule 33.3 governs the form and content of a petition for review filed by the defendant in a criminal case for the sole purpose of exhausting state remedies before seeking federal habeas corpus review.

(Subd (b) amended effective January 1, 2004.)

(c) ***

~~**(d) Contents of a reply**~~

~~A reply, if any, must be limited to addressing additional issues for review raised in an answer.~~

(Subd (d) repealed effective January 1, 2004.)

~~**(e)**~~**(d) *****

(Subd (d) relettered effective January 1, 2004; adopted as subd (e) effective January 1, 2003.)

~~(f)~~(e) ***

(Subd (e) relettered effective January 1, 2004; adopted as subd (f) effective January 1, 2003.)

Rule 28.1 amended effective January 1, 2004; adopted effective January 1, 2003.

Advisory Committee Comment ~~(2003)~~ (2004)

New rule 28.1 collects in one rule the provisions of former rule 28 governing the form and content of a petition for review, answer, and reply.

Subdivision (b). ***

Subdivision ~~(e)~~(d). Subdivision ~~(e)~~(d) states in terms of word counts rather than page counts the maximum permissible lengths of a petition for review, answer, or reply produced on a computer. This substantive change tracks ~~an identical~~ a provision in revised rule 14(c) governing Court of Appeal briefs and is explained in the Advisory Committee Comment to that provision.

Subdivision ~~(f)~~(e). Paragraphs (1) and (2) of subdivision ~~(f)~~(e) restate and simplify portions of, respectively, the second paragraph of former rule 28(e)(6) and the third paragraph of former rule 28(e)(5). No substantive change is intended.

The first and third paragraphs of former rule 28(e)(5) in effect required parties to include their points, authorities, and arguments in the bodies of their petitions, answers, and replies. New rule 28.1~~(f)~~(e) deletes these provisions as superfluous: the same requirements are imposed by rule 14(a)(1), which is made applicable to petitions, answers, and replies by new rule 28.1(a).

The third paragraph of former rule 28(e)(5) authorized a party to incorporate by reference portions of a petition, answer, and reply filed by another party in the same case or filed by any party in "a connected case" in which a petition for review was pending or had been filed. New rule 28.1~~(f)~~(e)(2) deletes as ambiguous the term "a connected case" and substitutes the more descriptive phrase, "a case that raises the same or similar issues," i.e., irrespective of the identity of the parties. The change is not substantive.

Rule 28.2. Ordering review

(a) ***

(b) Determination of petition

(1) The court may order review within 60 days after the last petition for review is filed. Before the 60-day period or any extension expires, the court may order one or more extensions to a date not later than 90 days after the last petition is filed.

~~(2) An order granting review must be signed by at least four justices; an order denying review may be signed by the Chief Justice alone.~~

~~(3)~~(2) If the court does not rule on the petition within the time allowed by (1), the petition is deemed denied.

(Subd (b) amended effective January 1, 2004.)

~~(c) Grant and hold~~

~~On or after granting review, the court may order action in the matter deferred until the court disposes of another matter or pending further order of the court.~~

(Subd (c) repealed effective January 1, 2004.)

~~(d)~~(c) Review on the court's own motion

(1) ~~In any case,~~ If no petition for review is filed, the Supreme Court may, on its own motion, order review of a Court of Appeal decision within 30 days after the decision is final in that court. Before the 30-day period or any extension expires, the Supreme Court may order one or more extensions to a date not later than 90 days after the decision is final in the Court of Appeal. If any such period ends on a day on which the clerk's office is closed, the court may order review on its own motion on the next day the clerk's office is open.

(2) If a petition for review is filed, the Supreme Court may deny the petition but order review on its own motion within the periods prescribed in (b)(1).

(Subd (c) amended and relettered effective January 1, 2004; adopted as subd (d) effective January 1, 2003.)

(d) Order; grant and hold

(1) An order granting review must be signed by at least four justices; an order denying review may be signed by the Chief Justice alone.

(2) On or after granting review, the court may order action in the matter deferred until the court disposes of another matter or pending further order of the court.

(Subd (d) adopted effective January 1, 2004.)

Rule 28.2 amended effective January 1, 2004; adopted effective January 1, 2003.

Advisory Committee Comment ~~(2003)~~(2004)

New rule 28.2 collects in one rule provisions of former rules 28 and 29.2 governing the transmittal of the record on petition for review, the time within which the Supreme Court may grant or deny review, "grant and hold" orders, and ordering review on the court's own motion.

Subdivision (a). Subdivision (a) of new rule 28.2 simplifies a provision of former rule 28(b) by directing the Court of Appeal clerk to send "the record" to the Supreme Court; further specification is unnecessary. The subdivision also deletes as unnecessary micromanagement the former directive to the Supreme Court clerk to retain and renumber that record if review is granted.

Subdivision (b). Former rule 28(a)(2) authorized the Supreme Court to grant review within 60 days after the filing of the last "timely" petition for review, but the word "timely" was both ambiguous and superfluous. The Supreme Court deems the 60-day period to begin on the filing date of the last petition for review that either (1) is timely in the sense that it is filed within the rule time for such petitions (i.e., 10 days after finality of the Court of Appeal decision) or (2) is *treated* as timely—although presented for filing after expiration of the rule time—in the sense that it is filed with permission of the Chief Justice on a showing of good cause for relief from default (former rule 45(c), now revised rule 28(e)(2)). In each circumstance it is the *filing* of the petition that triggers the 60-day period. New rule 28.2(b) therefore deletes the word "timely"; no substantive change is intended.

~~**Subdivision (c).** Subdivision (c) of new rule 28.2 is former rule 29.2(c). Its wording has been conformed to current Supreme Court practice; no substantive change is intended.~~

Subdivision ~~(d)~~(c). Subdivision ~~(d)~~(c) of new rule 28.2 is former rule 28(a)(1), authorizing orders of review on the Supreme Court's own motion. The former provision, however, apparently assumed the court would exercise this authority only in cases in which "no petition for review is filed." The assumption was not prima facie unreasonable, but in practice the court may occasionally wish to order review on its own motion even when a party has petitioned for review—for example, in a case in which the party seeks review only on an issue that the court deems unworthy of review and fails to seek review on an issue that the court does wish to consider. To fill this gap, subdivision ~~(d)~~(c)(2) ~~simply~~ expressly authorizes the court in such a case to "deny the petition but order review on its own motion ~~in any case.~~" within the periods prescribed in subdivision (b)(1), i.e., during the time that it has jurisdiction to grant the petition for review.

Subdivision (d). Subdivision (d)(2) of new rule 28.2 is former rule 29.2(c). Its wording has been conformed to current Supreme Court practice; no substantive change is intended.

January 1, 2004; previously repealed and adopted effective January 1, 2003.

Rule 29.5. Rehearing

(a) ***

(b) Petition and answer

A petition for rehearing and any answer must comply with rule 25(b)(1)~~,~~ ~~(2),~~ and (3). Any answer to the petition must be served and filed within 8 days after the petition is filed. Before the Supreme Court decision is final and for good cause, the Chief Justice may relieve a party from a failure to file a timely petition or answer.

(Subd (b) amended effective January 1, 2004.)

(c)–(e) ***

Rule 29.5 amended effective January 1, 2004; repealed and adopted effective January 1, 2003.

Rule 30. Taking the appeal

(a) Notice of appeal

(1) To appeal from a judgment or an appealable order of the superior court in a felony case—other than a judgment imposing a sentence of death—the defendant or the People must file a notice of appeal in that superior court. To appeal after a plea of guilty or nolo contendere or after an admission of probation violation, the defendant must also comply with (b).

(2) As used in (1), "felony case" means any criminal action in which a felony is charged, regardless of the outcome. It includes an action in which the defendant is charged with:

(A) a felony and a misdemeanor or infraction, but is convicted of only the misdemeanor or infraction;

(B) a felony, but is convicted of only a lesser offense; or

(C) an offense filed as a felony but punishable as either a felony or a misdemeanor, and the offense is thereafter deemed a misdemeanor under Penal Code section 17(b).

(3) If the defendant appeals, the defendant or the defendant's attorney must sign the notice of appeal. If the People appeal, the attorney for the People must sign the notice.

(4) The notice of appeal must be liberally construed. Except as provided in (b), the notice is sufficient if it identifies the particular judgment or order being appealed. The notice need not specify the court to which

the appeal is taken; the appeal will be treated as taken to the Court of Appeal for the district in which the superior court is located.

(b) Appeal after plea of guilty or nolo contendere or after admission of probation violation

(1) Except as provided in (4), to appeal from a superior court judgment after a plea of guilty or nolo contendere or after an admission of probation violation, the defendant must file in that superior court—in addition to the notice of appeal required by (a)—the statement required by Penal Code section 1237.5 for issuance of a certificate of probable cause.

(2) Within 20 days after the defendant files a statement under (1), the superior court must sign and file either a certificate of probable cause or an order denying the certificate.

(3) If the defendant does not file the statement required by (1) or if the superior court denies a certificate of probable cause, the superior court clerk must mark the notice of appeal "Inoperative," notify the defendant, and send a copy of the marked notice of appeal to the district appellate project.

(4) The defendant need not comply with (1) if the notice of appeal states that the appeal is based on:

(A) the denial of a motion to suppress evidence under Penal Code section 1538.5, or

(B) grounds that arose after entry of the plea and do not affect the plea's validity.

(5) If the defendant's notice of appeal contains a statement under (4), the reviewing court will not consider any issue affecting the validity of the plea unless the defendant also complies with (1).

(c) Notification of the appeal

(1) When a notice of appeal is filed, the superior court clerk must promptly mail a notification of the filing to the attorney of record for each party, to any unrepresented defendant, to the reviewing court clerk, to each court reporter, and to any primary reporter or reporting supervisor. If the defendant also files a statement under (b)(1), the clerk must not mail the notification unless the superior court files a certificate under (b)(2).

(2) The notification must show the date it was mailed, the number and title of the case, and the dates the notice of appeal and any certificate under (b)(2) were filed. If the information is available, the notification must also include:

(A) the name, address, telephone number, and California State Bar number of each attorney of record in the case;

(B) the name of the party each attorney represented in the superior court; and

(C) the name, address, and telephone number of any unrepresented defendant.

(3) The notification to the reviewing court clerk must also include a copy of the notice of appeal, any certificate filed under (b), and the sequential list of reporters made under rule 980.4.

(4) A copy of the notice of appeal is sufficient notification under (1) if the required information is on the copy or is added by the superior court clerk.

(5) The mailing of a notification under (1) is a sufficient performance of the clerk's duty despite the discharge, disqualification, suspension, disbarment, or death of the attorney.

(6) Failure to comply with any provision of this subdivision does not affect the validity of the notice of appeal.

Rule 30 repealed and adopted effective January 1, 2004.

Former rule

Former rule 30 repealed effective January 1, 2004. The former rule related to rules governing criminal appeals.

Advisory Committee Comment (2004)

Subdivision (a). Revised rule 30(a) collects related provisions of former rule 31(a) and (b) and implements certain provisions of the Penal Code.

Penal Code section 1235(b) provides that an appeal from a judgment or appealable order in a "felony case" is taken to the Court of Appeal, and Penal Code section 691(f), defines "felony case" to mean "a criminal action in which a felony is charged . . . ." Revised rule 30(a)(2) makes it clear that a "felony case" is an action in which a felony is charged *regardless of the outcome of the action*. Thus the question whether to file a notice of appeal under this rule or under the rules governing appeals to the appellate division of the superior court (rule 100 et seq.) is answered simply by examining the accusatory pleading: if that document charged the defendant with at least one count of felony (as defined in Pen. Code, § 17(a)), the Court of Appeal has appellate jurisdiction and the

appeal must be taken under this rule *even if the prosecution did not result in a punishment of imprisonment in a state prison*.

This is not a substantive change. It is settled case law that an appeal is taken to the Court of Appeal not only when the defendant is charged with and convicted of a felony, but also when the defendant is charged with both a felony and a misdemeanor (Pen. Code, § 691(f)) but is convicted of only the misdemeanor (e.g., *People v. Brown* (1970) 10 Cal.App.3d 169); when the defendant is charged with a felony but is convicted of only a lesser offense (Pen. Code, § 1159; e.g., *People v. Spreckels* (1954) 125 Cal.App.2d 507); and when the defendant is charged with an offense filed as a felony but punishable as either a felony or a misdemeanor, and the offense is thereafter deemed a misdemeanor under Penal Code section 17(b) (e.g., *People v. Douglas* (1999) 20 Cal.4th 85; *People v. Clark* (1971) 17 Cal.App.3d 890).

Trial court unification did not change this rule: after as before unification, "Appeals in felony cases lie to the [C]ourt of [A]ppeal, regardless of whether the appeal is from the superior court, the municipal court, or the action of a magistrate. *Cf.* Cal. Const. art. VI, § 11(a) [except in death penalty cases, Courts of Appeal have appellate jurisdiction when superior courts have original jurisdiction 'in causes of a type within the appellate jurisdiction of the [C]ourts of [A]ppeal on June 30, 1995 . . . .']." ("Recommendation on Trial Court Unification" (July 1998) 28 *Cal. Law Revision Com. Rep.* 455–56.)

Subdivision (b). Revised rule 30(b) is former rule 31(d), and governs appeals requiring a certificate of probable cause. Revised rule 30(b)(1) restates the first sentence of former rule 31(d), first paragraph, with two substantive changes. First, the revised subdivision fills a gap by extending the rule to appeals after an admission of probation violation, as provided by statute. (Pen. Code, § 1237.5.)

Second, under the former rule the statement required by Penal Code section 1237.5(a), for issuance of a certificate of probable cause served as a *substitute* for a notice of appeal; under revised rule 30(b)(1), however, the defendant is required to file a notice of appeal *and* that statement. Requiring a notice of appeal in all cases simplifies the rule, permits compliance with the signature requirement of revised rule 30(a)(2), ensures that the defendant's intent to appeal will not be misunderstood, and makes the provision consistent with the rule in civil appeals and with current practice as exemplified in the Judicial Council form governing criminal appeals. The change is substantive.

Revised rule 30(b)(3) fills a gap in the procedure for processing appeals after a plea of guilty or nolo contendere or after an admission of probation violation. In such "certificate" appeals, if the defendant does not file the statement required for issuance of a certificate of probable cause or if the superior court denies such a certificate, revised rule 30(b)(3) requires the clerk to mark the notice of appeal "Inoperative" and notify the appellant. Former rule 30(a) (now revised rule 30.1(d)) similarly required the clerk to mark the notice of appeal and notify the appellant if the notice was filed *late*; revised rule 30(b)(3) thus recognizes an additional ground on which the notice of appeal fails to achieve the appellant's intent. Revised rule 30(b)(3) also requires the clerk to send a copy of the notice of appeal, thus marked, to the appellate project for the district; that entity is charged with the duty, among others, of dealing with indigent criminal appeals that suffer from procedural defect, but it can do so efficiently only if it is promptly notified of such cases. The change is substantive.

Because of the drastic consequences of failure to file the statement required for issuance of a certificate of probable cause in an appeal after a plea of guilty or nolo contendere or after an admission of probation violation, revised rule 30(b)(5) alerts appellants to a relevant rule of case law, i.e., that although such an appeal may be maintained without a certificate of probable cause if the notice of appeal states the appeal is based on the denial of a motion to suppress evidence or on

grounds arising after entry of the plea and not affecting its validity (rule 30(b)(4)), no *issue* challenging the validity of the plea is cognizable on that appeal without a certificate of probable cause. (*People v. Mendez* (1999) 19 Cal.4th 1084, 1104.)

Subdivision (c). Revised rule 30(c) collects related provisions of former rule 31(a) and (c).

The third paragraph of former rule 31(a) directed each attorney filing a notice of appeal on a defendant's behalf—or assisting a defendant in filing a notice of appeal—to serve a copy of the notice on "the court reporter, lead reporter, or reporting supervisor." In a substantive change, the first sentence of revised rule 30(c)(1) places this duty instead on the superior court clerk, who is best situated to know the identities of the reporters and who is charged in any event with sending a notification of the filing of the notice of appeal to the reviewing court (together with a copy of the sequential list of reporters under rule 980.4) and to the attorneys for the parties.

The second sentence of revised rule 30(c)(1) is new: it is intended to promote economy by requiring the clerk to defer mailing a notification of the filing of a "certificate" appeal to the parties, the reviewing court, and particularly the reporter, until it is certain the appeal will in fact be allowed to proceed. The change is substantive.

Because a "certificate" appeal is not operative unless and until the superior court files a certificate of probable cause, revised rule 30(c)(2) requires the superior court clerk to include the date of that filing in the notification of the appeal, and revised rule 30(c)(3) requires the clerk to include a copy of the certificate itself in the notification mailed to the reviewing court clerk. Both are substantive changes.

Each provision of revised rule 30(c)(2)(A)–(C), (4), and (5) fills a gap and incorporates wording of revised rule 1(d)(2)(A)–(C), (3), and (4), respectively.

Rule 30.1. Time to appeal

(a) Normal time

Unless otherwise provided by law, a notice of appeal must be filed within 60 days after the rendition of the judgment or the making of the order being appealed.

(b) Premature notice of appeal

A notice of appeal filed before the judgment is rendered or the order is made is premature, but the reviewing court may treat the notice as filed immediately after the rendition of judgment or the making of the order.

(c) Late notice of appeal

The superior court clerk must mark a late notice of appeal "Received [date] but not filed," notify the party that the notice was not filed because it was late, and send a copy of the marked notice of appeal to the district appellate project.

(d) Receipt by mail from custodial institution

If the superior court clerk receives a notice of appeal by mail from a custodial institution after the period specified in (a) has expired but the envelope shows that the notice was mailed or delivered to custodial officials for mailing within the period specified in (a), the notice is deemed timely. The clerk must retain in the case file the envelope in which the notice was received.

Rule 30.1 adopted effective January 1, 2004.

Advisory Committee Comment (2004)

Revised rule 30.1 is derived from provisions of former rule 31.

Subdivisions (a)–(c). Subdivisions (a), (b), and (c) of revised rule 30.1 are the first two paragraphs of former rule 31(a). Because revised rule 30(b)(1) requires a defendant wanting to appeal from a judgment after a plea of guilty or nolo contendere to file a notice of appeal as in any other criminal case, the special provision of former rule 31(d) prescribing the time to appeal after such a plea is deleted as unnecessary. In a substantive change, revised rule 30.1(c) also requires the clerk to send a copy of a late notice of appeal, marked with the date it was received but not filed, to the appellate project for the district; that entity is charged with the duty, among others, of dealing with indigent criminal appeals that suffer from procedural defect, but it can do so efficiently only if it is promptly notified of such cases.

Subdivision (d). Revised rule 30.1(d) is former rule 31(e). The subdivision is not intended to limit a defendant's appeal rights under the case law of constructive filing. (See, e.g., *In re Jordan* (1992) 4 Cal.4th 116; *In re Benoit* (1973) 10 Cal.3d 72.)

Rule 30.2. Stay of execution and release on appeal

(a) Application

Pending appeal, the defendant may apply to the reviewing court:

(1) for a stay of execution after a judgment of conviction or an order granting probation; or

(2) for bail, to reduce bail, or for release on other conditions.

(b) Showing

The application must include a showing that the defendant sought relief in the superior court and that the court unjustifiably denied the application.

(c) Service

The application must be served on the district attorney and on the Attorney General.

(d) Interim relief

Pending its ruling on the application, the reviewing court may grant the relief requested. The reviewing court must notify the superior court under rule 56(h) of any stay that it grants.

Rule 30.2 adopted effective January 1, 2004.

Advisory Committee Comment (2004)

Revised rule 30.2 is former rule 32.

Subdivision (a). Revised rule 30.2(a)(1) fills a gap by recognizing that a reviewing court may stay execution of an order granting probation pending appeal. (See Pen. Code, § 1243.)

The remedy of an application for bail under revised rule 30.2(a)(2) is separate from but consistent with the statutory remedy of a petition for habeas corpus under Penal Code section 1490. (*In re Brumback* (1956) 46 Cal.2d 810, 815, fn. 3.)

An order of the Court of Appeal denying bail or reduction of bail, or for release on other conditions, is final on filing. (See rule 24(b)(2)(C).)

Subdivision (c). Revised rule 30.2(c) fills a gap by requiring service of an application for stay of execution on the district attorney and the Attorney General.

Subdivision (d). The first sentence of revised rule 30.2(d) recognizes the case law holding that a reviewing court may grant bail or reduce bail, or release the defendant on other conditions, pending its ruling on an application for that relief. (See, e.g., *In re Fishman* (1952) 109 Cal.App.2d 632, 633; *In re Keddy* (1951) 105 Cal.App.2d 215, 217.) The second sentence of the revised subdivision resolves an ambiguity in the former rule by requiring the reviewing court to notify the superior court under rule 56(h) when it grants either (i) a stay to preserve the status quo pending its ruling on a stay application or (ii) the stay requested by that application.

Rule 30.3. Abandoning the appeal

(a) How to abandon

An appellant may abandon the appeal at any time by filing an abandonment of the appeal signed by the appellant or the appellant's attorney of record.

(b) Where to file; effect of filing

(1) If the record has not been filed in the reviewing court, the appellant must file the abandonment in the superior court. The filing effects a dismissal of the appeal and restores the superior court's jurisdiction.

(2) If the record has been filed in the reviewing court, the appellant must file the abandonment in that court. The reviewing court may dismiss the appeal and direct immediate issuance of the remittitur.

(c) Clerk's duties

(1) The clerk of the court in which the appellant files the abandonment must immediately notify the adverse party of the filing or of the order of dismissal. If the defendant abandons the appeal, the clerk must notify both the district attorney and the Attorney General.

(2) If the appellant files the abandonment in the superior court, the clerk must immediately notify the reviewing court.

(3) The clerk must immediately notify the reporter if the appeal is abandoned before the reporter has filed the transcript.

Rule 30.3 adopted effective January 1, 2004.

Advisory Committee Comment (2004)

Revised rule 30.3 is former rule 38.

Subdivision (a). The former rule provided that an appellant may *dismiss* an appeal by filing an *abandonment* of it; revised rule 30.3(a) provides instead that an appellant may *abandon* an appeal by filing such an abandonment. The change is not substantive, and is intended to simplify the rule and to clarify its operation by reserving the term "dismiss" for the discretionary act of a reviewing court in response to an abandonment filed in that court (see revised subd. (b)(2)).

Subdivision (c). Paragraphs (2) and (3) of revised rule 30.3(c) fill gaps in the former rule and are substantive changes.

Rule 31. Normal record

(a) Contents

If the defendant appeals from a judgment of conviction, or if the People appeal from an order granting a new trial, the record must contain a clerk's transcript and a reporter's transcript, which together constitute the normal record.

(b) Clerk's transcript

The clerk's transcript must contain:

(1) the accusatory pleading and any amendment;

(2) any demurrer or other plea;

(3) all court minutes;

(4) all instructions submitted in writing, each one indicating the party requesting it;

(5) any written communication between the court and the jury or any individual juror;

(6) any verdict;

(7) any written opinion of the court;

(8) the judgment or order appealed from and any abstract of judgment or commitment;

(9) any motion for new trial, with supporting and opposing memoranda and attachments;

(10) the notice of appeal and any certificate of probable cause filed under rule 30(b);

(11) any transcript of a sound or sound-and-video recording furnished to the jury or tendered to the court under rule 203.5;

(12) any application for additional record and any order on the application;

(13) if the appellant is the defendant, the clerk's transcript must also contain:

(A) any written defense motion denied in whole or in part, with supporting and opposing memoranda and attachments;

(B) if related to a motion under (A), any search warrant and return and the reporter's transcript of any preliminary examination or grand jury hearing;

(C) any certified record of a court or the Department of Corrections admitted in evidence to prove a prior conviction or prison term; and

(D) the probation officer's report.

(c) Reporter's transcript

The reporter's transcript must contain:

(1) the oral proceedings on the entry of any plea other than a not guilty plea;

(2) the oral proceedings on any motion in limine;

(3) the oral proceedings at trial, but excluding the voir dire examination of jurors and any opening statement;

(4) all instructions given orally;

(5) any oral communication between the court and the jury or any individual juror;

(6) any oral opinion of the court;

(7) the oral proceedings on any motion for new trial;

(8) the oral proceedings at sentencing, granting or denial of probation, or other dispositional hearing;

(9) if the appellant is the defendant, the reporter's transcript must also contain:

(A) the oral proceedings on any motion under Penal Code section 1538.5 denied in whole or in part;

(B) the closing arguments; and

(C) any comment on the evidence by the court to the jury.

(d) Limited normal record in certain appeals

If the People appeal from a judgment on a demurrer to the accusatory pleading, or if the defendant or the People appeal from an appealable order other than a ruling on a motion for new trial, the normal record is

composed of a reporter's transcript of any oral proceedings incident to the judgment or order being appealed and a clerk's transcript containing:

(1) the accusatory pleading and any amendment;

(2) any demurrer or other plea;

(3) any motion or notice of motion granted or denied by the order appealed from, with supporting and opposing memoranda and attachments;

(4) the judgment or order appealed from and any abstract of judgment or commitment;

(5) any court minutes relating to the judgment or order appealed from; and

(6) the notice of appeal.

(e) Exhibits

Exhibits admitted in evidence, refused, or lodged are deemed part of the record, but may be transmitted to the reviewing court only as provided in rule 18.

(f) Stipulation for partial transcript

If counsel for the defendant and the People stipulate in writing before the record is certified that any part of the record is not required for proper determination of the appeal, that part must not be prepared or sent to the reviewing court.

(g) Form of record

The clerk's and reporter's transcripts must comply with rule 9.

Rule 31 repealed and adopted effective January 1, 2004.

Former rule
Former rule 31 repealed effective January 1, 2004; amended March 17, 1989, July 1, 1990, January 1, 1992, and January 1, 1994. The former rule related to notice of appeal.

Advisory Committee Comment (2004)

Revised rule 31 combines former rules 33(a), 34, and 35(f).

Subdivision (c). Former rule 33(a)(2) provided that oral communications between the court and the jury after the giving of the instructions were included in the normal reporter's transcript only in an appeal by the defendant; revised rule 31(c)(5) extends that provision generally to an appeal by either party. Written communications between the court and the jury are included in the normal clerk's transcript in an appeal by either party (see revised subd. (b)(5)), and no reason appears to perpetuate the distinction.

Subdivision (d). Revised rule 31(d) is former rule 34.

Subdivision (e). Revised rule 31(e) supersedes scattered and incomplete provisions on exhibits previously found in former rules 33(a)(3), 33(b)(3), 34(3), and 35(e). The revised rule incorporates by reference rule 18, which contains substantive changes that are explained in the comment to that rule.

Subdivision (f). Revised rule 31(f) is former rule 35(f).

Rule 31.1. Application in superior court for addition to normal record

(a) Appeal by the People

The People, as appellant, may apply to the superior court for inclusion in the record of any item that would be part of the normal record in a defendant's appeal.

(b) Application by either party

Either the People or the defendant may apply to the superior court for inclusion in the record of any of the following items:

(1) in the clerk's transcript: any defense motion granted in whole or in part or any motion by the People, with supporting and opposing memoranda and attachments;

(2) in the reporter's transcript:

(A) the voir dire examination of jurors;

(B) any opening statement; and

(C) the oral proceedings on motions other than those listed in rule 31(c).

(c) Application

(1) An application for additional record must describe the material to be included and explain how it may be useful in the appeal.

(2) The application must be filed in the superior court with the notice of appeal or as soon thereafter as possible, and will be treated as denied if it is filed after the record is sent to the reviewing court.

(3) The clerk must immediately present the application to the trial judge.

(d) Order

(1) Within five days after the application is filed, the judge must order that the record include as much of the additional material as the judge finds proper to fully present the points raised by the applicant. Denial of the application does not preclude a motion in the reviewing court for augmentation under rule 12.

(2) If the judge does not rule on the application within the time prescribed by (1), the requested material—other than exhibits—must be included in the clerk's transcript or the reporter's transcript without a court order.

(3) The clerk must immediately notify the reporter if additions to the reporter's transcript are required under (1) or (2).

Rule 31.1 adopted effective January 1, 2004.

Advisory Committee Comment (2004)

Revised rule 31.1 is former rule 33(b).

Subdivision (b). Former rule 33(b) described the application for additional record as both an "application" and a "request" for an order. For internal consistency and consistency with the style of these rules, revised rule 31.1 uses only the term "application." The change is not substantive.

Former rule 33(b)(3) provided for the transmission to the reviewing court of exhibits not requested by that court. Revised rule 31.1(e) now governs the transmission of exhibits.

Subdivisions (c) and (d). Former rule 33(b) required the clerk, when a request for additional record was filed, to *immediately* present it to the judge "and notify the reporter." But because the reporter had no duty to prepare any additional transcript unless the judge granted the request or failed to act on it within five days, the notification was premature. In a substantive change, subdivision (c)(3) of revised rule 31.1 deletes the requirement of immediate notification, and subdivision (d)(3) instead directs the clerk to notify the reporter when and if additions to the transcript are needed.

Rule 31.2. Sealed records

(a) *Marsden* hearing

(1) The reporter's transcript of any hearing held under *People v. Marsden* (1970) 2 Cal.3d 118 must be sealed. The chronological index to the reporter's transcript must include the *Marsden* hearing but list it as "SEALED" or the equivalent.

(2) The superior court clerk must send the original and one copy of the sealed transcript to the reviewing court with the record.

(3) The superior court clerk must send one copy of the sealed transcript to the defendant's appellate counsel or, if appellate counsel has not yet been retained or appointed, to the appellate project for the district.

(4) If the defendant raises a *Marsden* issue in the opening brief, the reviewing court clerk must send a copy of the sealed transcript to the People on written application, unless the defendant has served and filed with the brief a notice that the transcript contains confidential material not relevant to the issues on appeal.

(5) If the defendant serves and files a notice under (4), the People may move to obtain a copy of any relevant portion of the sealed transcript.

(b) Other in-camera proceedings

(1) Any party may apply to the superior court for an order that the record include:

(A) a sealed, separately paginated reporter's transcript of any in-camera proceeding at which a party was not allowed to be represented; and

(B) any item that the trial court withheld from a party on the ground that it was confidential.

(2) The application and any ruling under (1) must comply with rule 31.1.

(3) If the court grants the application, it may order the reporter who attended the in-camera proceeding to personally prepare the transcript. The chronological index to the reporter's transcript must include the proceeding but list it as "SEALED" or the equivalent.

(4) The superior court clerk must send the transcript of the in-camera proceeding or the confidential item to the reviewing court in a sealed envelope labeled "CONFIDENTIAL—MAY NOT BE EXAMINED WITHOUT COURT ORDER." The reviewing court clerk must file the envelope and store it separately from the remainder of the record.

(5) The superior court clerk must prepare an index of any material sent to the reviewing court under (4), showing the date and the names of all parties present at each proceeding, but not disclosing the substance of the sealed matter, and send the index:

(A) to the People, and

(B) to the defendant's appellate counsel or, if appellate counsel has not yet been retained or appointed, to the appellate project for the district.

(6) Unless the reviewing court orders otherwise, material sealed under (4) may be examined only by a reviewing court justice personally; but parties and their attorneys who had access to the material in the trial court may also examine it.

(c) Omissions

If at any time the superior court clerk or the reporter learns that the record omits material that any rule requires included and that this rule requires sealed:

(1) the clerk and the reporter must comply with rule 32.1(b), and

(2) the clerk must comply with the provisions of this rule requiring sealing and prescribing which party's counsel, if any, must receive a copy of sealed material.

Rule 31.2 adopted effective January 1, 2004.

Advisory Committee Comment (2004)

Revised rule 31.2 is former rule 33.5.

Subdivision (a). Former rule 33.5(a) required the superior court clerk to send the defendant's copy of a sealed *Marsden* transcript to the reviewing court and required the reviewing court clerk to forward that copy to the defendant's appellate counsel; the latter act was not discretionary. In a substantive change intended to simplify the process and promote efficiency, revised rule 31.2(a)(3) requires the superior court clerk to send the defendant's copy directly to the defendant's appellate counsel.

Former rule 33.5(a) also required the reviewing court clerk, in cases in which the defendant's appellate counsel had not been retained or appointed when the *Marsden* transcript reached the reviewing court, to retain custody of the transcript and send it to such counsel only "when he or she has appeared in the cause." But because most criminal defendants request appointment of appellate counsel and the appellate projects are charged with recommending those appointments to the reviewing courts, it is the practice of reviewing court clerks to send *Marsden* transcripts directly to the appellate projects on receiving them, rather than retaining them until

counsel are appointed. Revised rule 31.2(a)(3)(B) incorporates this practice; the change is substantive.

Subdivision (b). Former rule 33.5(b) authorized a party to seek an order adding confidential materials to the record by means of a "request" to the court. For consistency with the style of these rules, revised rule 31.2(b) substitutes the term "application." The change is not substantive.

Former rule 33.5(b)(2) authorized adding confidential "written materials" to the record; filling a gap, revised rule 31.2(b)(1)(B) substitutes the broader phrase "any item" in order to include such nonwritten materials as photographic exhibits.

Revised rule 31.2(b)(5) fills a gap by requiring the clerk to prepare and send to the parties an index of any confidential materials sent to the reviewing court, showing the date and the names of all parties present. The purpose of this substantive change is to assist the parties in making—and the court in adjudicating—motions to unseal portions of the record. To protect confidentiality until a record is unsealed, however, the index must endeavor to identify the sealed matter without disclosing its substance.

Rule 31.3. Juror-identifying information

(a) Applicability

A clerk's transcript, a reporter's transcript, or any other document in the record that contains juror-identifying information must comply with this rule.

(b) Juror names, addresses, and telephone numbers

(1) The name of each trial juror or alternate sworn to hear the case must be replaced with an identifying number wherever it appears in any document. The superior court clerk must prepare and keep under seal in the case file a table correlating the jurors' names with their identifying numbers. The clerk and the reporter must use the table in preparing all transcripts or other documents.

(2) The addresses and telephone numbers of trial jurors and alternates sworn to hear the case must be deleted from all documents.

(c) Potential jurors

Information identifying potential jurors called but not sworn as trial jurors or alternates must not be sealed unless otherwise ordered under Code of Civil Procedure section 237(a)(1).

Rule 31.3 adopted effective January 1, 2004.

Advisory Committee Comment (2004)

Revised rule 31.3 is former rule 33.6. The rule implements Code of Civil Procedure section 237.

Rule 32. Preparing, certifying, and sending the record

(a) Immediate preparation when appeal is likely

(1) The reporter and the clerk must begin preparing the record immediately after a verdict or finding of guilt of a felony is announced following a trial on the merits, unless the judge determines that an appeal is unlikely under (2).

(2) In determining the likelihood of an appeal, the judge must consider the facts of the case and the fact that an appeal is likely if the defendant has been convicted of a crime for which probation is prohibited or is prohibited except in unusual cases, or if the trial involved a contested question of law important to the outcome.

(3) A determination under (2) is an administrative decision intended to further the efficient operation of the court and not intended to affect any substantive or procedural right of the defendant or the People. The determination cannot be cited to prove or disprove any legal or factual issue in the case and is not reviewable by appeal or writ.

(b) Appeal after plea of guilty or nolo contendere or after admission of probation violation

In an appeal under rule 30(b)(1), the time to prepare, certify, and file the record begins when the court files a certificate of probable cause under rule 30(b)(2).

(c) Clerk's transcript

(1) Except as provided in (a) or (b), the clerk must begin preparing the clerk's transcript immediately after the notice of appeal is filed.

(2) Within 20 days after the notice of appeal is filed, the clerk must complete preparation of an original and two copies of the clerk's transcript.

(3) On request, the clerk must prepare an extra copy for the district attorney.

(4) If there is more than one appealing defendant, the clerk must prepare an extra copy for each additional appealing defendant represented by separate counsel.

(5) The clerk must certify as correct the original and all copies of the clerk's transcript.

(d) Reporter's transcript

(1) Except as provided in (a) or (b), the reporter must begin preparing the reporter's transcript immediately on being notified by the clerk under rule 30(c)(1) that the notice of appeal has been filed.

(2) The reporter must prepare an original and the same number of copies of the reporter's transcript as (c) requires of the clerk's transcript, and must certify each as correct.

(3) The reporter must deliver the original and all copies to the superior court clerk as soon as they are certified, but no later than 20 days after the notice of appeal is filed.

(4) Any portion of the transcript transcribed during trial must not be retyped unless necessary to correct errors, but must be repaginated and bound with any portion of the transcript not previously transcribed. Any additional copies needed must not be retyped but must be prepared by photocopying or an equivalent process.

(5) In a multireporter case, the clerk must accept any completed portion of the transcript from the primary reporter one week after the time prescribed by (3) even if other portions are uncompleted. The clerk must promptly pay each reporter who certifies that all portions of the transcript assigned to that reporter are completed.

(e) Extension of time

(1) The superior court may not extend the time for preparing the record.

(2) The reviewing court may order one or more extensions of time for preparing the record, not exceeding a total of 60 days, on receipt of:

(A) an affidavit showing good cause, and

(B) in the case of a reporter's transcript, certification by the superior court presiding judge, or a court administrator designated by the

presiding judge, that an extension is reasonable and necessary in light of the workload of all reporters in the court.

(f) Sending the transcripts

(1) When the clerk's and reporter's transcripts are certified as correct, the clerk must promptly send:

(A) the original transcripts to the reviewing court, noting the sending date on each original;

(B) one copy of each transcript to each defendant's appellate counsel and to the Attorney General; and

(C) one copy of each transcript to the district attorney if requested under (c)(3).

(2) If the defendant's appellate counsel has not been retained or appointed when the transcripts are certified as correct, the clerk must send that counsel's copy of the transcripts to the district appellate project.

(g) Probation officer's report

The probation officer's report included in the clerk's transcript under rule 31(b) must appear in all copies of the appellate record. The reviewing court's copy of the report must be placed in a sealed envelope marked "Confidential—May Not Be Examined Without Court Order—Probation Officer Report."

(h) Supervision of preparation of record

Each Court of Appeal clerk, under the supervision of the administrative presiding justice or the presiding justice, must take all appropriate steps to ensure that superior court clerks and reporters promptly perform their duties under this rule. This provision does not affect the superior courts' responsibility for the prompt preparation of appellate records.

Rule 32 repealed and adopted effective January 1, 2004.

Former rule

Former rule 32 repealed effective January 1, 2004; amended effective January 1, 1984. The former rule related to stay of execution and bail on appeal.

Advisory Committee Comment (2004)

Subdivision (a). Revised rule 32(a) is former rule 34.5, implementing Code of Civil Procedure section 269(b). Like the former rule, revised rule 32(a)(2) provides brief guidelines to assist the trial judge in deciding whether an appeal in the case is likely or unlikely. The former rule set forth three additional guidelines for the same purpose; but because two of these are plainly implied by the remainder of the rule and the third is not actually a guideline but a statistic, all three are deleted from revised rule 32(a).

Subdivision (b). Revised rule 32(b) restates the third paragraph of former rule 31(d).

Subdivision (c). Revised rule 32(c) is derived from former rule 35(a). Former rule 35(a) generally provided that extensions of time to prepare the clerk's transcript were governed by rule 45(c), but former rule 35(d) specifically provided a different procedure for extending any record-preparation time prescribed by the rule. The revised rule removes this inconsistency by providing that extensions of time to prepare the clerk's transcript, like extensions for the reporter's transcript, are governed by subdivision (e).

In a case with more than one appealing defendant, the former rule directed the clerk to prepare an extra copy of the clerk's transcript for each extra defendant; but the rule limited the number of those copies to two regardless of the number of additional defendants, unless one or more of the defendants was sentenced to death. The revised rule deletes that limit in order to conform to current practice, in which a copy of the transcript is typically prepared for each additional appealing defendant represented by separate counsel.

Subdivision (d). Revised rule 32(d) is primarily derived from former rule 35(b). The revised rule deletes the provision of the former rule that required the clerk to deliver the notification of the filing of the notice of appeal to the reporter "personally or to his or her office or internal mail receptacle" and authorized the clerk to mail the notification if the reporter was not a court employee; the provision was unnecessary micromanagement of the clerk's office. (For the same reason, revised rule 4 deletes the same provision from the civil appellate rules.)

Paragraphs (3) and (5) of former rule 35(c) contained overlapping and inconsistent provisions directing that copies of the record be shared in various ways if there were four or more appealing defendants. Because revised rule 32(c)(4) and (d)(2) require that a copy of each transcript be prepared for each additional appealing defendant represented by separate counsel, the former provisions for sharing copies are deleted as obsolete.

Subdivision (f). Revised rule 32(f) is derived from former rule 35(c) and (e). Former rule 35(e) purported to require that the district attorney send to the clerk any copy of the transcript that the clerk had previously sent to the district attorney at the latter's request (former rule 35(a), revised rule 32(c)(2)), and that the clerk then send that copy to the Attorney General. Revised rule 32(f) deletes that requirement for several reasons: it is inconsistent with the purpose of revised subdivision (c)(3), it is unnecessary because the Attorney General's Office receives its own copy of the transcript under revised subdivision (f)(1) (former rule 35(c)), and it does not conform to actual practice.

Revised rule 32(f)(2) fills a gap and reflects current practice (see also revised rule 31.2(a)(3)(B)).

Former rule 35(e). Former rule 35(e) provided for the transmission of certain exhibits to the reviewing court. Revised rule 31(e) now governs all matters relating to the transmission of exhibits.

Former rule 35(f). Former rule 35(f) has been moved to revised rule 31(f).

Rule 32.1. Augmenting or correcting the record in the Court of Appeal

(a) Subsequent trial court orders

If, after the record is certified, the trial court amends or recalls the judgment or makes any other order in the case, including an order affecting the sentence or probation, the clerk must promptly certify and send a copy of the amended abstract of judgment or other order—as an augmentation of the record—to the reviewing court, the probation officer, the defendant, the defendant's appellate counsel, and the Attorney General.

(b) Omissions

If, after the record is certified, the superior court clerk or the reporter learns that the record omits a document or transcript that any rule or order requires included, the clerk must promptly copy and certify the document or the reporter must promptly prepare and certify the transcript. Without the need for a court order, the clerk must promptly send the document or transcript—as an augmentation of the record—to the reviewing court, the defendant's appellate counsel, and the Attorney General.

(c) Defendant's appellate counsel not yet retained or appointed

If the defendant's appellate counsel has not yet been retained or appointed, the clerk must send to the district appellate project any document or transcript added to the record under (a) or (b).

(d) Augmentation or correction by the reviewing court

At any time, on motion of a party or on its own motion, the reviewing court may order the record augmented or corrected as provided in rule 12.

Rule 32.1 adopted effective January 1, 2004.

Advisory Committee Comment (2004)

Subdivision (a). Revised rule 32.1(a) combines related provisions of the first sentence of former rule 33(d) and the last paragraph of former rule 35(e).

Subdivision (b). Revised rule 32.1(b) is the third paragraph of former rule 35(e). The words "or order" inserted in the first sentence are intended to refer to any court order to include additional material in the record, e.g., an order of the superior court pursuant to revised rule 31.1(d)(1).

Subdivision (c). Revised rule 32.1(c) restates the second sentence of former rule 33(d), modified to conform to current practice (see also revised rule 31.2(a)(3)(B)).

Subdivision (d). Revised rule 32.1(d) is new. It is not a substantive change, but is a cross-reference inserted in this rule to clarify the applicability of rule 12 to criminal appeals.

Rule 32.2. Agreed statement

If the parties present the appeal on an agreed statement, they must comply with the relevant provisions of rule 6, but the appellant must file an original and three copies of the statement in superior court within 25 days after filing the notice of appeal.

Rule 32.2 adopted effective January 1, 2004.

Advisory Committee Comment (2004)

Revised rule 32.2 is former rule 36(a).

Rule 32.3. Settled statement

(a) Application

As soon as a party learns that any portion of the oral proceedings cannot be transcribed, the party may serve and file in superior court an application for permission to prepare a settled statement. The application must explain why the oral proceedings cannot be transcribed.

(b) Order and proposed statement

The judge must rule on the application within five days after it is filed. If the judge grants the application, the parties must comply with the relevant provisions of rule 7, but the applicant must deliver a proposed statement to the judge for settlement within 30 days after it is ordered, unless the reviewing court extends the time.

(c) Serving and filing the settled statement

The applicant must prepare, serve, and file in superior court an original and three copies of the settled statement.

Rule 32.3 adopted effective January 1, 2004.

Advisory Committee Comment (2004)

Revised rule 32.3 is based on former rule 36(b).

Subdivision (a). Former rule 36(b) authorized only appellants to apply for permission to prepare a settled statement when a portion of the oral proceedings could not be transcribed. In a substantive change, revised rule 32.3(a) expands this authority to include any party: no reason appears to deny respondents the opportunity to seek such relief.

Revised rule 32.3(a) also deletes as unnecessary formalisms the former requirements that the application be "verified" and include, as an alternative to a statement of the facts, a "certificate" of the clerk showing that a reporter's transcript cannot be obtained; under the revised rule, the application must simply "explain why the oral proceedings cannot be transcribed." The sufficiency of that explanation is for the court to decide. The change is substantive.

Rule 33. Briefs

(a) Contents and form

Except as provided in this rule, briefs in criminal appeals must comply as nearly as possible with rules 13 and 14.

(b) Length

(1) A brief produced on a computer must not exceed 25,500 words, including footnotes. Such a brief must include a certificate by appellate counsel or an unrepresented defendant stating the number of words in the brief; the person certifying may rely on the word count of the computer program used to prepare the brief.

(2) A typewritten brief must not exceed 75 pages.

(3) The tables, a certificate under (1), and any attachment permitted under rule 14(d) are excluded from the limits stated in (1) or (2).

(4) A combined brief in an appeal governed by (e) must not exceed double the limit stated in (1) or (2).

(5) On application, the presiding justice may permit a longer brief for good cause.

(c) Time to file

(1) The appellant's opening brief must be served and filed within 40 days after the record is filed in the reviewing court.

(2) The respondent's brief must be served and filed within 30 days after the appellant's opening brief is filed.

(3) The appellant must serve and file a reply brief, if any, within 20 days after the respondent files its brief.

(4) The time to serve and file a brief may not be extended by stipulation, but only by order of the presiding justice under rule 45.

(5) Rule 17 applies if a party fails to timely file an appellant's opening brief or a respondent's brief, but the period specified in the notice required by that rule must be 30 days.

(d) Service

(1) Defendant's appellate counsel must serve each brief for the defendant on the People and the district attorney, and must send a copy of each to the defendant personally unless the defendant requests otherwise.

(2) The proof of service under (1) must state that a copy of the defendant's brief was sent to the defendant, or counsel must file a signed statement that the defendant requested in writing that no copy be sent.

(3) For each appealing defendant, the People must serve two copies of their briefs on the defendant's appellate counsel and one copy on the district appellate project.

(4) A copy of each brief must be served on the superior court clerk for delivery to the trial judge.

(e) When a defendant and the People appeal

When both a defendant and the People appeal, the defendant must file the first opening brief unless the reviewing court orders otherwise, and rule 16(b) governs the contents of the briefs.

(f) Amicus curiae briefs

Amicus curiae briefs may be filed as provided in rule 13(c).

Rule 33 repealed and adopted effective January 1, 2004.

Former rule
Former rule 33 repealed effective January 1, 2004; amended effective January 1, 1982, January 1, 1983, January 1, 1984, January 1, 1990, January 1, 1992, July 1, 1993, January 1, 1994, January 1, 1997, January 31, 1997, and January 1, 1999. The former rule related to contents of record on appeal from judgment or order on motion for new trial; noncapital cases.

Advisory Committee Comment (2004)

Revised rule 33 is based on former rule 37.

Subdivision (b). Revised rule 33(b)(1) states the maximum permissible length of a brief produced on a computer in terms of word count rather than page count. This substantive change tracks a provision in revised rule 14(c) governing Court of Appeal briefs, and is explained in the comment to that provision. The word count assumes a brief using one-and-one-half spaced lines of text, as permitted by rule 14(b)(5).

The maximum permissible length of briefs in death penalty appeals is prescribed in revised rule 36.

Subdivision (c). For completeness, revised rule 33(c)(4) adds a cross-reference to the general provision of rule 45 allowing extensions of time to file briefs by order of the presiding justice. The provision tracks an identical provision in the rule governing briefs on the merits in the Supreme Court (rule 29.1(a)(5)).

Subdivision (d). Revised rule 33(d)(3) requires the People to serve one copy of their briefs on the appellate project for the district and an extra copy for each additional appealing defendant. This is a substantive change but reflects common practice.

Subdivision (e). Revised rule 33(e) fills a gap by providing for cases in which both a defendant and the People appeal. It is derived from rule 16, adapted to criminal appeals.

Subdivision (f). Revised rule 33(f) is a cross-reference provision added to clarify the applicability of rule 13(c) to criminal appeals.

Rule 33.1. Hearing and decision in the Court of Appeal

Rules 21 through 27 govern the hearing and decision in the Court of Appeal of an appeal in a criminal case.

Rule 33.1 adopted effective January 1, 2004.

Advisory Committee Comment (2004)

Revised rule 33.1 is new but is not a substantive change. It clarifies the applicability, to noncapital criminal appeals, of the relevant rules governing the hearing and decision of civil appeals in the Court of Appeal.

Rule 33.2. Hearing and decision in the Supreme Court

Rules 28 through 29.9 govern the hearing and decision in the Supreme Court of an appeal in a criminal case.

Rule 33.2 adopted effective January 1, 2004.

Advisory Committee Comment (2004)

Revised rule 33.2 is new but is not substantive change. It clarifies the applicability, to noncapital criminal appeals, of the rules governing the hearing and decision of civil appeals in the Supreme Court.

Rule 33.3. Petition for review to exhaust state remedies

(a) Purpose

After decision by the Court of Appeal in a criminal case, a defendant may file an abbreviated petition for review in the Supreme Court for the sole purpose of exhausting state remedies before presenting a claim for federal habeas corpus relief.

(b) Form and contents

(1) The words "Petition for Review to Exhaust State Remedies" must appear prominently on the cover of the petition.

(2) Except as provided in (3), the petition must comply with rule 28.1.

(3) The petition need not comply with rule 28.1(b)(1)–(2) but must include:

(A) a statement that the case presents no grounds for review under rule 28(b) and the petition is filed solely to exhaust state remedies for federal habeas corpus purposes;

(B) a brief statement of the underlying proceedings, including the nature of the conviction and the punishment imposed; and

(C) a brief statement of the factual and legal bases of the claim.

(c) Service

The petition must be served on the Court of Appeal clerk but need not be served on the superior court clerk.

Rule 33.3 adopted effective January 1, 2004.

Advisory Committee Comment (2004)

Subdivision (b). Although a petition under this rule must state that "the case presents no grounds for review under rule 28(b)" (rule 33.3(b)(3)(A)), this does not mean the Supreme Court cannot order review if it determines the case warrants it. The list of grounds for granting review in rule 28(b) is not intended to be exclusive, and from time to time the Supreme Court has exercised its discretion to order review in a case that does not present one of the listed grounds. (Compare U.S. Supreme Court Rule 10 [the listed grounds for granting certiorari, "although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers"].)

Rule 33.3(b)(3)(C) requires the petition to include a statement of the factual and legal bases of the claim. This showing is required by federal law: "for purposes of exhausting state remedies, a claim for relief [in state court] . . . must include reference to a specific federal constitutional guarantee, as well as a statement of the facts that entitle the petitioner to relief." (*Gray v. Netherland* (1996) 518 U.S. 152, 162–163, citing Picard v. Connor (1971) 404 U.S. 270.) The federal courts will decide whether a petition filed in compliance with this rule satisfies federal exhaustion requirements, and practitioners should consult federal law to determine whether the petition's statement of the factual and legal bases for the claim is sufficient for that purpose.

~~Rule 33.5. Confidential in-camera proceedings~~

~~**(a) [*Marsden* hearings]** In addition to the normal record required by any other rule, the record on appeal in a criminal action and in an appeal from the juvenile court shall also include a sealed reporter's transcript of hearings held pursuant to *People* v. *Marsden* (1970) 2 Cal.3d 118. The original and two copies of the sealed transcript shall accompany the record upon its transmission to the reviewing court. The chronological index to the reporter's transcript shall refer to the *Marsden* hearing and state "SEALED" or the equivalent.~~

~~The clerk of the reviewing court shall send a copy of the transcript to the defendant's or juvenile's counsel on appeal when counsel is appointed or, in the case of retained counsel, when he or she has appeared in the cause.~~

~~If the defendant or juvenile raises a *Marsden* issue in his or her brief, the People shall be sent a copy of the transcript upon their written request unless appellant has served and filed, with the appellant's opening brief, a notice that the *Marsden* transcript contains confidential material not relevant to the issues raised on appeal. If a notice to that effect is served and filed, the People may file a motion to obtain a copy of relevant portions of the confidential transcript.~~

~~*(Subd (a) amended effective July 1, 1992; adopted effective July 1, 1990; and previously amended effective January 1, 1992.)*~~

~~**(b) [Other in-camera proceedings]** In addition to the additional record that may be requested under any other rule, the record on appeal in a criminal action and in an appeal from the juvenile court may, upon request and trial court order as provided in rule 33(b), also include:~~

~~(1) A sealed, separately paginated reporter's transcript of any confidential in-camera proceeding from which a party was excluded from being represented. The trial judge may order that the transcript be prepared personally by the court reporter who attended the proceeding. The chronological index to the reporter's transcript shall refer to the in-camera proceeding and state "SEALED" or the equivalent.~~

~~(2) Written materials submitted to the trial court, all or part of which were determined to be confidential and were withheld from a party.~~

~~This reporter's transcript and confidential material, if made part of the record, shall be transmitted to the reviewing court in sealed envelopes marked "CONFIDENTIAL — MAY NOT BE EXAMINED WITHOUT COURT ORDER." Unless otherwise ordered by the reviewing court, the materials described in this subdivision may be examined only by a judge of the reviewing court personally. The reviewing court shall permit examination of these materials by parties to whom the information was accessible in the trial court and their attorneys.~~

~~Sealed envelopes containing confidential materials shall be securely filed and kept separately from the main file in the cause.~~

~~**(c)** If at any time the clerk or reporter learns that a document or transcript required by this rule to be included in the record on appeal was inadvertently omitted, or learns that material required by another rule to be transmitted and required by this rule to be under seal was inadvertently omitted, the clerk and reporter shall comply with rule 35(e) with respect to transmitting the document or transcript to the reviewing court as an augmentation to the record without the necessity of a court order, and shall comply with this rule with respect to sealing and with respect to which party's counsel, if any, shall receive a copy.~~

~~*(Subd (c) as adopted effective January 1, 1994.)*~~

Rule 33.5 repealed effective January 1, 2004; adopted effective July 1, 1990; previously amended effective January 1, 1992, July 1, 1992, and January 1, 1994.

~~**Drafter's Notes**~~

~~**1990** The council adopted new rule 33.5 to standardize the way a record of confidential in-camera proceedings is transmitted to the reviewing court. Rule 33.5(a) deals with proceedings pursuant to *People* v. *Marsden* (1970) 2 Cal. 3d 118, and rule 33.5(b) deals with all other confidential in-camera proceedings. The council also adopted new rule 859 to ensure that the fact that there were confidential proceedings will appear in the minutes.~~

January 1992 – See note following rule 33.

July 1992 – Rule 33.5(a) was amended to protect against inadvertent disclosure to the People of a *Marsden* motion transcript that is not relevant to the issues raised on appeal. If the appellant raises a *Marsden* issue on appeal, the People can receive a copy of the transcript on request unless the appellant has filed a notice that the *Marsden* transcript contains confidential material not relevant to the issues raised on appeal. If a notice to that effect is filed, the People may secure a copy of relevant portions of the *Marsden* transcript by motion.

1994 – Rule 33.5 is amended to require transmission of omitted confidential material promptly, under seal.

Rule 33.6. Sealing juror-identifying information in the record on appeal (Code Civ. Proc., §237)

The clerk and reporter shall use the following procedures to comply with Code of Civil Procedure section 237(a)(2) when preparing the clerk's transcript, the reporter's transcript, or any other document included in the appellate record that contains juror-identifying information:

(1) *(Jurors' names)* The names of trial jurors, including alternates, who were sworn to hear the case shall be redacted from all documents, and an identifying number shall be substituted wherever a juror's name appears. The clerk shall prepare a key correlating the jurors' names with their identifying numbers, which shall be used by both the clerk and the reporter in preparing transcripts or other documents. The key shall be kept under seal in the trial court's file.

(2) *(Addresses and telephone numbers)* The addresses and telephone numbers of trial jurors, including alternates, who were sworn to hear the case shall be redacted from the original and all copies of the transcript.

(3) *(Capital cases)* In appeals in capital cases, an unredacted version of the redacted pages and a copy of the key correlating juror names with numbers shall be bound together and transmitted to the Supreme Court under seal.

(4) *(Potential jurors)* Juror-identifying information about potential jurors who were called for the case but were not sworn to sit as trial jurors or alternates shall not be sealed unless an order so directing has been issued under Code of Civil Procedure section 237(a)(1).

Rule 33.6 repealed effective January 1, 2004; adopted effective July 1, 1997. The repealed rule related to sealing juror-identifying information in the record on appeal (Code Civ. Proc., §237).

Rule 34. In general

(a) Automatic appeal to Supreme Court

If a judgment imposes a sentence of death, an appeal by the defendant is automatically taken to the Supreme Court.

(b) Copies of judgment

When a judgment of death is rendered, the superior court clerk must immediately send certified copies of the commitment to the Supreme Court, the Attorney General, the Governor, and the California Appellate Project in San Francisco.

(c) Extensions of time

When a rule in this part authorizes a trial court to grant an extension of a specified time period, the court must consider the relevant policies and factors stated in rule 45.5.

(d) Supervising preparation of record

The Supreme Court clerk, under the supervision of the Chief Justice, must take all appropriate steps to ensure that superior court clerks and reporters promptly perform their duties under the rules in this part. This provision does not affect the superior courts' responsibility for the prompt preparation of appellate records in capital cases.

(e) Definitions

For purposes of this part:

(1) the delivery date of a transcript sent by mail is the mailing date plus five days, and

(2) "trial counsel" means both the defendant's trial counsel and the prosecuting attorney.

Rule 34 repealed and adopted effective January 1, 2004.

Former rule

Former rule 34 repealed effective January 1, 2004; amended effective January 1, 1984. The former rule related to contents of record on appeal in other noncapital cases.

Advisory Committee Comment (2004)

Revised rule 34 restates former rule 39.50 and related provisions of the Penal Code.

Subdivision (a). Revised rule 34(a) is derived from Penal Code section 1239(b).

Subdivision (b). Revised rule 34(b) is derived from Penal Code sections 1217 and 1218 and former rule 39.50(e). Filling a gap, the revised rule requires the clerk to send a certified copy of the commitment to the California Appellate Project in San Francisco. That entity also receives copies of the record when it is certified as complete (revised rule 35.1(g)(2)) and when it is certified as accurate (revised rule 35.2(e)(2)).

Subdivision (c). In determining whether to grant an extension of time under these rules, former rule 39.50(d) made it permissible for a trial court to consider the relevant policies and factors listed in rule 45.5. But rule 45.5 *requires* the Supreme Court and the Court of Appeal to consider those same policies and factors (rule 45.5(c)), and no reason appears for a different rule in the case of the trial courts. Moreover, the list of such factors in rule 45.5 is so comprehensive that it is difficult to conceive of a factor that a trial court could properly consider that is not found in that rule. (See, e.g., rule 45.5(c)(9) ["Any other factor which in the context of a particular case constitutes good cause"].) In a substantive change, revised rule 34(c) therefore provides that in determining whether to grant an extension, a trial court *must* consider the relevant policies and factors stated in rule 45.5.

The "relevant" policies and factors that the trial court must consider are those which are relevant to appeals from judgments of death. One of those factors is particularly relevant to such appeals, i.e., "[t]he number and complexity of the issues raised . . . and the length of the record, . . . including the number of relevant trial exhibits." (Rule 45.5(c)(3).) The "average-length record" described in the second sentence of rule 45.5(c)(3), however, refers to records in civil and noncapital criminal cases; the average-length record in capital cases is much longer.

Subdivision (d). Revised rule 34(d) is former rule 35(h).

Subdivision (e). Revised rule 34(e)(2) restates Penal Code section 190.8(i).

Former subdivision (b). Subdivision (b) of former rule 39.50—which provided that the rules in this part must be "interpreted to effectuate the intent of the Legislature, as stated in Penal Code section 190.8"—is deleted as unnecessary: any rule of court that implements a statute must be construed to effectuate the intent of that statute.

Rule 34.1. Contents and form of the record

(a) Contents of the record

(1) The record must include a clerk's transcript containing:

(A) all items listed in rule 31(b), except item (10);

(B) all items listed in rule 31.1(b)(1), whether or not requested; and

(C) any other document filed or lodged in the case, including each juror questionnaire, whether or not the juror was selected.

(2) The record must include a reporter's transcript containing:

(A) all items listed in rule 31(c);

(B) all items listed in rule 31.1(b)(2), whether or not requested; and

(C) any other oral proceedings in the case, including any proceedings that did not result in a verdict or sentence of death because the court ordered a mistrial or a new trial.

(3) All exhibits admitted in evidence, refused, or lodged are deemed part of the record, but may be transmitted to the reviewing court only as provided in rule 36.1.

(4) The superior court or the Supreme Court may order that the record include additional material.

(b) Confidential records

(1) All documents filed or lodged confidentially under Penal Code section 987.9 or 987.2 must be sealed. Documents filed or lodged under Penal Code section 987.9 must be bound separately from documents filed under Penal Code section 987.2. Unless otherwise ordered, copies must be provided only to the Supreme Court and to counsel for the defendant to whom the documents relate.

(2) All reporter's transcripts of in camera proceedings must be sealed. Unless otherwise ordered, copies must be provided only to the Supreme Court and to counsel for parties present at the proceedings.

(3) Records sealed under this rule must comply with rule 31.2.

(c) Juror-identifying information

Any document in the record containing juror-identifying information must be edited in compliance with rule 31.3. Unedited copies of all such documents and a copy of the table required by the rule, under seal and bound together, must be included in the record sent to the Supreme Court.

(d) Form of record

The clerk's transcript and the reporter's transcript must comply with rule 9, but the indexes for the clerk's transcript must separately list all sealed documents in that transcript, and the indexes for the reporter's transcript must separately list all sealed reporter's transcripts with the date and the names of all parties present. The indexes must not disclose the substance of any sealed matter.

Rule 34.1 adopted effective January 1, 2004.

Advisory Committee Comment (2004)

Subdivision (a). Subdivision (a) of revised rule 34.1 restates Penal Code section 190.7(a) and former rule 39.51(a) and (c).

Subdivision (b). Under the third sentence of revised rule 34.1(b)(1), copies of sealed documents must be given only to the Supreme Court and to the defendant concerned "[u]nless otherwise ordered." The qualification is added in recognition of the statutory right of the Attorney General to request, under certain circumstances, copies of documents filed confidentially under Penal Code section 987.9(d). To facilitate compliance with such requests, the second sentence of revised rule 34.1(b)(1) requires such documents to be bound separately from documents filed confidentially under Penal Code section 987.2.

Paragraph (3) of revised rule 34.1(b) implements the purpose of the subdivision by requiring compliance with revised rule 31.2 in capital cases.

Subdivision (c). The first sentence of revised rule 34.1(c) fills a gap by requiring compliance with revised rule 31.3 in capital cases, i.e., by requiring the editing of all documents in the record to delete any juror-identifying information. The second sentence restates paragraph (3) of former rule 33.6.

Subdivision (d). Revised rule 34.1(d) moves to a more appropriate location provisions of former rule 39.53(b)(1) and (3) requiring that the clerk's and reporter's transcripts comply with rule 9.

Revised rule 34.1(d) fills a gap by requiring that the master indexes of the clerk's and reporter's transcripts separately list all documents and transcripts each contains that were filed in sealed form under subdivision (b). The purpose of this substantive change is to assist the parties in making—and the court in adjudicating—motions to unseal portions of the record. To protect confidentiality until a record is unsealed, however, each index must endeavor to identify the sealed matter it lists without disclosing its substance.

Rule 34.2. Preparing and certifying the record of preliminary proceedings

(a) Definitions

For purposes of this rule:

(1) the "preliminary proceedings" are all proceedings held prior to and including the filing of the information or indictment, whether in open court or otherwise, and include the preliminary examination or grand jury proceeding;

(2) the "record of the preliminary proceedings" is the court file and the reporter's transcript of the preliminary proceedings;

(3) the "responsible judge" is the judge assigned to try the case or, if none is assigned, the presiding superior court judge or designee of the presiding judge; and

(4) the "designated judge" is the judge designated by the presiding judge to supervise preparation of the record of preliminary proceedings.

(b) Notice of intent to seek death penalty

In any case in which the death penalty may be imposed:

(1) If the prosecution notifies the responsible judge that it intends to seek the death penalty, the judge must notify the presiding judge and the clerk. The clerk must promptly enter the information in the court file.

(2) If the prosecution does not give notice under (1)—and does not give notice to the contrary—the clerk must notify the responsible judge 60 days before the first date set for trial that the prosecution is presumed to seek the death penalty. The judge must notify the presiding judge, and the clerk must promptly enter the information in the court file.

(c) Assignment of judge designated to supervise preparation of record of preliminary proceedings

(1) Within five days after receiving notice under (b), the presiding judge must designate a judge to supervise preparation of the record of the preliminary proceedings.

(2) If there was a preliminary examination, the designated judge must be the judge who conducted it.

(d) Notice to prepare transcript

Within five days after receiving notice under (b)(1) or notifying the judge under (b)(2), the clerk must notify each reporter who reported a preliminary proceeding to prepare a transcript of the proceeding. If there is more than one reporter, the designated judge may assign a reporter or another designee to perform the functions of the primary reporter.

(e) Reporter's duties

(1) The reporter must prepare an original and five copies of the reporter's transcript and two additional copies for each codefendant against whom the death penalty is sought. The transcript must include the preliminary examination or grand jury proceeding unless a transcript of that examination or proceeding has already been filed in superior court for inclusion in the clerk's transcript.

(2) The reporter must certify the original and all copies of the reporter's transcript as correct.

(3) Within 20 days after receiving the notice to prepare the reporter's transcript, the reporter must deliver the original and all copies of the transcript to the clerk.

(f) Review by counsel

(1) Within five days after the reporter delivers the transcript, the clerk must deliver the original to the designated judge and one copy to each trial counsel. If a different attorney represented the defendant or the People in the preliminary proceedings, both attorneys must perform the tasks required by (2).

(2) Each trial counsel must promptly:

(A) review the reporter's transcript for errors or omissions;

(B) review the docket sheets and minute orders to determine whether all preliminary proceedings have been transcribed;

(C) consult with opposing counsel to determine whether any other proceedings or discussions should have been transcribed; and

(D) review the court file to determine whether it is complete.

(g) Declaration and request for corrections or additions

(1) Within 30 days after the clerk delivers the transcript, each trial counsel must serve and file a declaration stating that counsel or another person under counsel's supervision has performed the tasks required by (f), and must serve and file either:

(A) a request for corrections or additions to the reporter's transcript or court file, or

(B) a statement that counsel does not request any corrections or additions.

(2) If a different attorney represented the defendant in the preliminary proceedings, that attorney must also file the declaration required by (1).

(3) A request for additions to the reporter's transcript must state the nature and date of the proceedings and, if known, the identity of the reporter who reported them.

(4) If any counsel fails to timely file a declaration under (1), the designated judge must not certify the record and must set the matter for hearing, require a showing of good cause why counsel has not complied, and fix a date for compliance.

(h) Corrections or additions to the record of preliminary proceedings

If any counsel files a request for corrections or additions:

(1) Within 15 days after the last request is filed, the designated judge must hold a hearing and order any necessary corrections or additions.

(2) If any portion of the proceedings cannot be transcribed, the judge may order preparation of a settled statement under rule 32.3.

(3) Within 20 days after the hearing under (1), the original reporter's transcript and court file must be corrected or augmented to reflect all corrections or additions ordered. The clerk must promptly send copies of the corrected or additional pages to trial counsel.

(4) The judge may order any further proceedings to correct or complete the record of the preliminary proceedings.

(5) When the judge is satisfied that all corrections and additions ordered have been made and copies of all corrected or additional pages have been sent to the parties, the judge must certify the record of the preliminary proceedings as complete and accurate.

(6) The record of the preliminary proceedings must be certified as complete and accurate within 120 days after the presiding judge orders preparation of the record.

(i) Computer-readable copies

(1) When the record of the preliminary proceedings is certified as complete and accurate, the clerk must promptly notify the reporter to prepare five computer-readable copies of the transcript and two additional computer-readable copies for each codefendant against whom the death penalty is sought.

(2) Each computer-readable copy must comply with the format, labeling, content, and numbering requirements of Code of Civil Procedure section 271, subdivision (b), and any additional requirements prescribed by the Supreme Court, and must be further labeled to show the date it was made.

(3) A computer-readable copy of a sealed transcript must be placed on a separate disk and clearly labeled as confidential.

(4) The reporter is to be compensated for computer-readable copies as provided in Government Code section 69954, subdivision (b).

(5) Within 20 days after the clerk notifies the reporter under (1), the reporter must deliver the computer-readable copies to the clerk.

(j) Delivery to superior court

Within five days after the reporter delivers the computer-readable copies, the clerk must deliver to the responsible judge, for inclusion in the record:

(1) the certified original reporter's transcript of the preliminary proceedings and the copies that have not been distributed to counsel, including the computer-readable copies, and

(2) the complete court file of the preliminary proceedings or a certified copy of that file.

(k) Extension of time

(1) Except as provided in (2), the designated judge may extend for good cause any of the periods specified in this rule.

(2) The period specified in (h)(6) may be extended only as follows:

(A) the designated judge may request an extension of the period by presenting a declaration to the responsible judge explaining why the time limit cannot be met, and

(B) the responsible judge may order an extension not exceeding 90 additional days; in an exceptional case the judge may order an extension exceeding 90 days, but must state on the record the specific reason for the greater extension.

(*l*) Notice that death penalty is no longer sought

After the presiding judge has ordered preparation of the pretrial record, if the death penalty is no longer sought, the clerk must promptly notify the reporter that this rule does not apply.

Rule 34.2 adopted effective January 1, 2004.

Advisory Committee Comment (2004)

Revised rule 34.2 is former rule 39.52 and implements Penal Code section 190.9(a). Revised rules 34.2–35.2 govern the process of preparing and certifying the record in any appeal from a judgment of death imposed after a trial that began on or after January 1, 1997; specifically, revised rule 34.2 provides for the record of the preliminary proceedings in such an appeal. Revised rule 35.3 governs the process of certifying the record in any appeal from a judgment of death imposed after a trial that began before January 1, 1997.

Subdivision (a). Revised rule 34.2(a)(1) fills a gap by including grand jury proceedings among the preliminary proceedings it defines. Grand jury proceedings may also result in judgments of death, although their use for that purpose is limited.

Former rule 39.52(b)(1) used the phrase "responsible superior court judge" to refer to the judge assigned to try the case. Because all trial judges are superior court judges after trial court unification, revised rule 34.2(a)(3) deletes the qualifier "superior court" as unnecessary.

Subdivision (b). Former rule 39.52(b) directed the judge to "enter . . . on the record" the fact that the prosecution has given notice of intent to seek the death penalty. Recognizing that it is normally the clerk rather than the judge who makes docket entries, revised rule 34.2(b)(1) instead directs the judge to notify the clerk of the prosecution's notice and directs the clerk to enter that fact in the court file. Similarly, revised rule 34.2(b)(2) clarifies the operation of the presumption of prosecution intent declared by former rule 39.52(b)(2).

Subdivision (f). As used in revised rule 34.2(f)—as in all rules in this part—trial counsel "means both the defendant's trial counsel and the prosecuting attorney." (Revised rule 34(e)(2).)

Subdivision (g). Revised rule 34.2(g)(1), like former rule 39.52(h), requires counsel to file a declaration stating that counsel has performed the tasks required by the rule, i.e., has reviewed the record for completeness and accuracy. Under the former rule, counsel who was satisfied with the state of the record—and therefore had determined not to request any corrections or additions—simply remained silent in regard to any such request, and the court was required to infer from that silence that counsel did not intend to make a request. In a substantive change designed to prevent any misunderstanding of counsel's intent on this important point, revised rule 34.2(g)(1)(B) requires counsel not intending to request corrections or additions to make a statement to that effect as part of the required declaration.

Revised rule 34.2(g)(3) fills a gap; it is derived from former rule 39.55(b).

Former rule 39.52(i) declared that if any counsel failed to file either the declaration required by the rule or a request for extension of time, the court was directed to "use all reasonable means to ensure compliance with this rule." Although revised rule 34.2(g)(4) deletes the quoted language because it duplicates the governing statute (Pen. Code, § 190.8(a)), the directive remains in force by operation of the statute; for the purposes of the rule, however, it is sufficient to specify—as did the former rule—that in such event the court must set the matter for hearing, require a showing of good cause why counsel has not complied, and fix a date for compliance.

Subdivision (h). Revised rule 34.2(h)(2) fills a gap and reflects current practice. Revised rule 34.2(h)(6) restates a provision of Penal Code section 190.9(a)(2).

Subdivision (i). Former rule 39.52(i)(6) required the reporter to prepare six computer-readable copies of the corrected transcript of the preliminary proceedings. Because the subsequent rules governing preparation of the record in appeals from judgments of death call for only five such copies (former rules 39.53–39.57; revised rules 35–35.3), revised rule 34.2(i)(1) requires the reporter to prepare only five computer-readable copies of the corrected transcript of the preliminary proceedings.

Former rule 39.52(i)(6) required the computer-readable copies of the transcript to comply with former Code of Civil Procedure section 269(c), and former rule 35(b), and the latter rule specified that such copies must be on "CD-ROM or 3.5-inch disks." Rather than enshrining any particular technology in these rules, however, revised rule 34.2(i)(2) simply states that computer-readable copies must comply with the statute (now Code Civ. Proc., § 271(b)) and "any additional requirements prescribed by the Supreme Court." The change is not meant to be substantive, but to provide the flexibility necessary to ensure the record-preparation process remains current with evolving computer technology.

Revised rule 34.2(i)(3) fills a gap; it is derived from former rule 39.54(f). Revised rule 34.2(i)(4) restates a provision of former rule 35(b), second paragraph.

Subdivision (j). Former rule 39.52(j) required the clerk to send the record of the preliminary proceedings—including the computer-readable copies—to the responsible superior court judge "[n]o later than five days after the record has been certified." This provision created an apparent inconsistency with former rule 39.52(i)(6), which gave the reporter 20 days to prepare the same computer-readable copies after the judge certified the record (see former rule 39.52(i)(5)). To resolve this inconsistency, revised rule 34.2(j) provides instead that the five-day period for the clerk to act begins when the reporter delivers the computer-readable copies to the clerk.

Subdivision (*l*). Former rule 39.52(k) required the clerk to notify the reporter if at any time the death penalty was no longer sought "or available." Revised rule 34.2(*l*) deletes the quoted phrase as superfluous: it is assumed the prosecution will not seek the death penalty if for any reason the penalty is or becomes unavailable.

~~Rule 34.5. Ordering transcript upon conviction after trial~~

~~This rule is adopted under Code of Civil Procedure section 269(b).~~

~~Notwithstanding rule 35(b) or any other rule, the trial judge shall order the reporter and the clerk to begin preparing the record on appeal immediately after~~

~~a verdict or finding of guilty of a felony is announced after a trial on the merits, unless the court determines that it is likely that no appeal from the decision will be made.~~

~~In determining the likelihood of an appeal, the trial judge shall consider the facts of the case and the following standards:~~

~~(1) An appeal is very likely if~~

~~(a) the defendant has been convicted of a crime for which probation is prohibited or is prohibited except in unusual cases; or~~

~~(b) the trial involved a contested question of law important to the outcome.~~

~~(2) An appeal is less likely if neither of the factors identified in the preceding paragraph was present.~~

~~(3) An appeal is unlikely in relatively few cases that are tried to a verdict or finding of guilt.~~

~~(4) If the judge is undecided whether an appeal is likely, the judge should order immediate preparation of the record.~~

~~The trial judge's determination to order immediate preparation of the record or not to do so is an administrative decision intended to further the efficient operation of the courts. The determination is not intended to affect any substantive or procedural right of either the defendant or the People. The determination shall not be cited to prove or disprove any issue of law or fact in the case and should not, therefore, be reviewable on appeal or by writ.~~

Rule 34.5 repealed effective January 1, 2004; adopted and amended effective January 1, 1991. The repealed rule related to ordering transcript upon conviction after trial.

~~Drafter's Notes~~

~~1990~~ ~~The council adopted rule 34.5 to implement Statutes of 1990, chapter 636. The rule sets forth standards for superior courts to use in deciding whether to order transcript preparation to begin immediately after conviction by full trial of a felony. In general, the standard recognizes that the great majority of defendants convicted of a felony after trial are likely to appeal; and that if in doubt, therefore, the judge should order early preparation of the transcript.~~

~~Superior court judges are urged to note instances when the new statute and rule result in transcripts but the defendant does not appeal; and instances when the rule failed to indicate that early preparation should be ordered, but the defendant does appeal. Summaries of these instances, and suggestions for improving the rule, should be sent to the Administrative Office of the Courts after at least three months' experience with the new procedure.~~

Rule 35. Preparing the trial record

(a) Clerk's duties

(1) The clerk must promptly—and no later than five days after the judgment of death is rendered—notify the reporter to prepare the reporter's transcript.

(2) The clerk must prepare an original and eight copies of the clerk's transcript and two additional copies for each codefendant sentenced to death.

(3) The clerk must certify the original and all copies of the clerk's transcript as correct.

(b) Reporter's duties

(1) The reporter must prepare an original and five copies of the reporter's transcript and two additional copies for each codefendant sentenced to death.

(2) Any portion of the transcript transcribed during trial must not be retyped unless necessary to correct errors, but must be repaginated and bound with any portion of the transcript not previously transcribed. Any additional copies needed must not be retyped but must be prepared by photocopying or an equivalent process.

(3) The reporter must certify the original and all copies of the reporter's transcript as correct and deliver them to the clerk.

(c) Sending the record to trial counsel

Within 30 days after the judgment of death is rendered, the clerk must deliver one copy of the clerk's and reporter's transcripts to each trial counsel, retaining the original transcripts and the remaining copies. If counsel does not receive the transcripts within that period, counsel must promptly notify the superior court.

(d) Extension of time

(1) On request of the clerk or a reporter and for good cause, the superior court may extend the period prescribed in (c) for no more than 30

days. For any further extension the clerk or reporter must file a request in the Supreme Court, showing good cause.

(2) A request under (1) must be supported by a declaration explaining why the extension is necessary. The court may presume good cause if the clerk's and reporter's transcripts combined will likely exceed 10,000 pages.

(3) If the superior court orders an extension under (1), the order must specify the reason justifying the extension. The clerk must promptly send a copy of the order to the Supreme Court.

Rule 35 repealed and adopted effective January 1, 2004.

Former rule

Former rule 35 repealed effective January 1, 2004; amended effective January 1, 1983, January 1, 1985, July 1, 1990, January 1, 1991, January 1, 1992, January 1, 1993, January 1, 1995, July 1, 1995, January 1, 1999, and January 1, 1000. The former rule related to preparation, certification, and filing of record.

Advisory Committee Comment (2004)

Revised rule 35 is former rule 39.53 and implements Penal Code section 190.8(b).

Subdivision (a). Revised rule 35(a)(1) deletes the provision of former rule 39.53(b)(2) that required the clerk to deliver the notification of a judgment of death to the reporter "personally or to his or her office or internal mail receptacle" and authorized the clerk to mail the notification if the reporter was not a court employee; the provision was deemed unnecessary micromanagement of the clerk's office. (For the same reason, revised rules 4 and 32 delete similar provisions from the rules on appeals in civil cases and noncapital criminal cases, respectively.)

Revised rule 35(a)(2) deletes as redundant the provisions of former rule 39.53(b)(1) directing that the clerk's transcript must conform to rule 9 and must include the contents of the municipal court file. The form and contents of the clerk's transcript are prescribed in revised rule 34.1.

Subdivision (b). Revised rule 35(b)(1) deletes as redundant the provisions of former rule 39.53(b)(3) directing that the reporter's transcript must conform to rule 9. The form of the reporter's transcript is prescribed in revised rule 34.1.

Subdivision (c). Former rule 39.53(b)(4) directed that the copies of the clerk's and reporter's transcripts that the clerk sent to trial counsel for review be paper copies. Revised rule 35(c) deletes this directive as superfluous: under revised rules 35.1 and 35.2 (former rules 39.54 and 39.55), computer-readable copies of the reporter's transcript are not prepared until the record has been certified as complete and accurate, and no such copies of the clerk's transcript are ever prepared.

Filling a gap, the second sentence of revised rule 35(c) restates a provision of Penal Code section 190.8, subdivision (b).

Subdivision (d). Former rule 39.53(b)(6) authorized the court to presume good cause to extend the time to prepare the transcripts in cases in which the clerk's and reporter's transcripts combined "exceed" 10,000 pages. By definition, however, the transcripts have not been completed at that point in the process, and so it may not be possible to know whether they exceed 10,000 pages. Revised rule 35(d)(2) therefore provides that good cause may be presumed when the combined transcripts "will likely" exceed 10,000 pages.

Rule 35.1. Certifying the trial record for completeness

(a) Review by counsel during trial

During trial, counsel must call the court's attention to any errors or omissions they may find in the transcripts. The court must periodically ask counsel for lists of any such errors or omissions and may hold hearings to verify them.

(b) Review by counsel after trial

When the clerk delivers the clerk's and reporter's transcripts to trial counsel, each counsel must promptly:

(1) review the docket sheets and minute orders to determine whether the reporter's transcript is complete;

(2) consult with opposing counsel to determine whether any other proceedings or discussions should have been transcribed; and

(3) review the court file to determine whether the clerk's transcript is complete.

(c) Declaration and request for additions or corrections

(1) Within 30 days after the clerk delivers the transcripts, each trial counsel must serve and file a declaration stating that counsel or another person under counsel's supervision has performed the tasks required by (b), and must serve and file either:

(A) a request to include additional materials in the record or to correct errors that have come to counsel's attention, or

(B) a statement that counsel does not request any additions or corrections.

(2) A request for additions to the reporter's transcript must state the nature and date of the proceedings and, if known, the identity of the reporter who reported them.

(3) If any counsel fails to timely file a declaration under (1), the judge must not certify the record and must set the matter for hearing, require a showing of good cause why counsel has not complied, and fix a date for compliance.

(d) Completion of the record

If any counsel files a request for additions or corrections:

(1) The clerk must promptly deliver the original transcripts to the judge who presided at the trial.

(2) Within 15 days after the last request is filed, the judge must hold a hearing and order any necessary additions or corrections. The order must require that any additions or corrections be made within 10 days of its date.

(3) The clerk must promptly—and in any event within five days—notify the reporter of an order under (2). If any portion of the proceedings cannot be transcribed, the judge may order preparation of a settled statement under rule 32.3.

(4) The original transcripts must be augmented or corrected to reflect all additions or corrections ordered. The clerk must promptly send copies of the additional or corrected pages to trial counsel.

(5) Within five days after the augmented or corrected transcripts are filed, the judge must set another hearing to determine whether the record has been completed or corrected as ordered. The judge may order further proceedings to complete or correct the record.

(6) When the judge is satisfied that all additions or corrections ordered have been made and copies of all additional or corrected pages have been sent to trial counsel, the judge must certify the record as complete and redeliver the original transcripts to the clerk.

(7) The judge must certify the record as complete within 90 days after the judgment of death is rendered.

(e) Computer-readable copies

(1) When the record is certified as complete, the clerk must promptly notify the reporter to prepare five computer-readable copies of the transcript and two additional computer-readable copies for each codefendant sentenced to death.

(2) Each computer-readable copy must comply with the format, labeling, content, and numbering requirements of Code of Civil Procedure section 271(b) and any additional requirements prescribed by the Supreme Court, and must be further labeled to show the date it was made.

(3) A computer-readable copy of a sealed transcript must be placed on a separate disk and clearly labeled as confidential.

(4) The reporter is to be compensated for computer-readable copies as provided in Government Code section 69954(b).

(5) Within 10 days after the clerk notifies the reporter under (1), the reporter must deliver the computer-readable copies to the clerk.

(f) Extension of time

(1) The court may extend for good cause any of the periods specified in this rule.

(2) An application to extend the 30-day period to review the record under (c) must be served and filed within that period. If the clerk's and reporter's transcripts combined exceed 10,000 pages, the court may grant an additional three days for each 1,000 pages over 10,000.

(3) If the court orders an extension of time, the order must specify the justification for the extension. The clerk must promptly send a copy of the order to the Supreme Court.

(g) Sending the certified record

When the record is certified as complete, the clerk must promptly send:

(1) To each defendant's appellate counsel and each defendant's habeas corpus counsel: one paper copy of the entire record and one computer-readable copy of the reporter's transcript. If either counsel has not been retained or appointed, the clerk must keep that counsel's copies until counsel is retained or appointed.

(2) To the Attorney General, the Habeas Corpus Resource Center, and the California Appellate Project in San Francisco: one paper copy of the clerk's transcript and one computer-readable copy of the reporter's transcript.

(h) Notice of delivery

When the clerk sends the record to the defendant's appellate counsel, the clerk must serve a notice of delivery on the Supreme Court clerk.

Rule 35.1 adopted effective January 1, 2004.

Advisory Committee Comment (2004)

Revised rule 35.1 is former rule 39.54 and implements Penal Code section 190.8(c)–(e).

Subdivision (a). Revised rule 35.1(a) restates Penal Code section 190.8(c); the wording is simplified, but no substantive change is intended.

Subdivision (b). As used in revised rule 35.1(b)—as in all rules in this part—trial counsel "means both the defendant's trial counsel and the prosecuting attorney." (Revised rule 34(e)(2).)

Revised rule 35.1(b)(2) fills a gap; it is derived from former rule 39.52(g)(4).

Subdivision (c). Revised rule 35.1(c)(1), like former rule 39.54(c)(1), requires counsel to file a declaration stating that counsel has performed the tasks required by the rule, i.e., has reviewed the record for completeness. Under the former rule, counsel who was satisfied with the state of the record—and therefore had determined not to request any additions—simply remained silent in regard to any such request, and the court was required to infer from that silence that counsel did not intend to make a request. In a substantive change designed to prevent any misunderstanding of counsel's intent on this important point, revised rule 35.1(c)(1)(B) requires counsel not intending to request corrections or additions to make a statement to that effect as part of the required declaration.

Subdivision (e). Former rule 39.54(f) required the reporter to prepare one additional computer-readable copy of the transcript for each codefendant sentenced to death. Revised rule 35.1(e)(1) requires two such copies: an additional copy is needed to comply with the further requirement of the rule that the clerk send a computer-readable copy to each codefendant's habeas corpus counsel (former rule 39.54(j)(1); revised rule 35.1(g)(1)).

Former rule 39.54(f) required computer-readable copies of the transcript to comply with Code of Civil Procedure section 269(c), and former rule 35(b), and the latter rule specified that such copies must be on "CD-ROM or 3.5-inch disks." Rather than enshrining any particular technology in these rules, however, revised rule 35.1(e)(2) simply states that computer-readable copies must comply with the statute (now Code Civ. Proc., § 271(b)) and "any additional requirements prescribed by the Supreme Court." The change is not meant to be substantive, but to provide the flexibility necessary to ensure the record-preparation process remains current with evolving computer technology.

Revised rule 35.1(e)(4) restates a provision of former rule 35(b), second paragraph.

Rule 35.2. Certifying the trial record for accuracy

(a) Request for corrections or additions

(1) Within 90 days after the clerk delivers the record to defendant's appellate counsel, any party may serve and file a request for corrections or additions.

(2) A request for additions to the reporter's transcript must state the nature and date of the proceedings and, if known, the identity of the reporter who reported them.

(b) Correction of the record

(1) If any counsel files a request for corrections or additions, the procedures and time limits of rule 35.1(d)(1)–(5) must be followed.

(2) When the judge is satisfied that all corrections or additions ordered have been made, the judge must certify the record as accurate and redeliver the record to the clerk.

(3) The judge must certify the record as accurate within 120 days after it is delivered to appellate counsel.

(c) Computer-readable copies

(1) When the record is certified as accurate, the clerk must promptly notify the reporter to prepare six computer-readable copies of the reporter's transcript and two additional computer-readable copies for each codefendant sentenced to death.

(2) In preparing the computer-readable copies, the procedures and time limits of rule 35.1(e)(2)–(5) must be followed.

(d) Extension of time

(1) The court may extend for good cause any of the periods specified in this rule.

(2) An application to extend the 90-day period to request corrections or additions under (a) must be served and filed within that period. If the clerk's and reporter's transcripts combined exceed 10,000 pages, the court may grant an additional 15 days for each 1,000 pages over 10,000.

(3) If the court orders an extension of time, the order must specify the justification for the extension. The clerk must promptly send a copy of the order to the Supreme Court.

(4) If the court orders an extension of time, the court may conduct a status conference or require the counsel who requested the extension to file a status report on counsel's progress in reviewing the record.

(e) Sending the certified record

When the record is certified as accurate, the clerk must promptly send:

(1) To the Supreme Court: the corrected original record, including the judge's certificate of accuracy, and a computer-readable copy of the reporter's transcript.

(2) To each defendant's appellate counsel, each defendant's habeas corpus counsel, the Attorney General, the Habeas Corpus Resource Center, and the California Appellate Project in San Francisco: a copy of the order certifying the record and a computer-readable copy of the reporter's transcript.

(3) To the Governor: the copies of the transcripts required by Penal Code section 1218, with copies of any corrected or augmented pages inserted.

Rule 35.2 adopted effective January 1, 2004.

Advisory Committee Comment (2004)

Revised rule 35.2 restates former rules 39.55 and 39.56 and implements Penal Code section 190.8(g).

Subdivision (c). Former rule 39.55(e) required the reporter to prepare one additional computer-readable copy of the transcript for each codefendant sentenced to death. Revised rule 35.2(c)(1) requires two such copies: an additional copy is needed to comply with the further requirement of the rule that the clerk send a computer-readable copy to each codefendant's habeas corpus counsel (former rule 39.56(3); revised rule 35.2(e)(2)).

The provisions of former rule 39.55(e) specifying the format of the computer-readable copies of the reporter's transcript now appear in revised rule 35.1(e).

Subdivision (d). Former rule 39.55(h) authorized the court, after granting an extension of time, to conduct a status conference or require defense counsel to file a status report "90 days after the delivery of the record to [counsel], or at some other reasonable time . . . ." Because it may be assumed the court will not fix an *unreasonable* time for this purpose, revised rule 35.2(d)(4) deletes the quoted provision as unnecessary. No substantive change is intended. And because an extension of time may be requested not only by defense counsel but also by counsel for the People, revised rule

35.2(d)(4) authorizes the court to require a status report simply from "the counsel who requested the extension . . . ."

Subdivision (e). Revised rule 35.2(e) is former rule 39.56. Former rule 39.56(2)–(3) directed the clerk, after the record was certified, to send the parties "a notice enumerating all corrections ordered and stating a date of certification," as well as copies of all the corrected transcript pages. Under revised rule 35.1(d)(4), however, the corrected pages are sent to the parties before certification, and to send a belated list of "all corrections ordered" would serve little purpose. Revised rule 35.2(e) therefore deletes these directives in favor of a copy of the certification order for the parties and a copy of the transcripts and corrected pages for the Governor.

Rule 35.3. Certifying the record in pre-1997 trials

(a) Application

This rule governs the process of certifying the record in any appeal from a judgment of death imposed after a trial that began before January 1, 1997.

(b) Sending the transcripts to counsel for review

(1) When the clerk and the reporter certify that their respective transcripts are correct, the clerk must promptly send a copy of each transcript to each defendant's trial counsel, to the Attorney General, to the district attorney, to the California Appellate Project in San Francisco, and to the Habeas Corpus Resource Center, noting the sending date on the originals.

(2) The copies of the reporter's transcript sent to the California Appellate Project and the Habeas Corpus Resource Center must be computer-readable copies complying with the format, labeling, content, and numbering requirements of Code of Civil Procedure section 271(b) and any additional requirements prescribed by the Supreme Court, and must be further labeled to show the date they were made.

(3) When the clerk is notified of the appointment or retention of each defendant's appellate counsel, the clerk must promptly send that counsel copies of the clerk's transcript and the reporter's transcript, noting the sending date on the originals. The clerk must notify the Supreme Court, the Attorney General, and each defendant's appellate counsel in writing of the date the transcripts were sent to appellate counsel.

(c) Correcting, augmenting, and certifying the record

(1) Within 90 days after the clerk delivers the transcripts to each defendant's appellate counsel, any party may serve and file a request for correction or augmentation of the record. Any request for extension of time must be served and filed in the Supreme Court no later than five days before the 90-day period expires.

(2) If no party files a timely request for correction or augmentation, the clerk must certify on the original transcripts that no party objected to the accuracy or completeness of the record within the time allowed by law.

(3) Within 10 days after any party files a timely request for correction or augmentation, the clerk must deliver the request and the transcripts to the trial judge.

(4) Within 60 days after receiving a request and transcripts under (3), the judge must order the reporter, clerk, or party to make any necessary corrections or do any act necessary to complete the record, fixing the time for performance. If any portion of the oral proceedings cannot be transcribed, the judge may order preparation of a settled statement under rule 32.3.

(5) The clerk must promptly send a copy of any order under (4) to the parties and to the Supreme Court, but any request for extension of time to comply with the order must be addressed to the trial judge.

(6) The original transcripts must be corrected or augmented to reflect all corrections or augmentations ordered. The clerk must promptly send copies of all corrected or augmented pages to the parties.

(7) The judge must allow the parties a reasonable time to review the corrections or augmentations. If no party objects to the corrections or augmentations as prepared, the judge must certify that the record is complete and accurate. If any party objects, the judge must resolve the objections before certifying the record.

(8) If the record is not certified within 90 days after the clerk sends the transcripts to appellate counsel under (b)(2), the judge must monitor preparation of the record to expedite certification and report the status of the record monthly to the Supreme Court.

(d) Sending the certified record

When the clerk certifies that no party objected to the record or the judge certifies that the record is complete and accurate, the clerk must promptly send:

(1) To the Supreme Court: the original record, including the original certification by the trial judge.

(2) To each defendant's appellate counsel, the Attorney General, and the California Appellate Project in San Francisco: a copy of the order certifying the record.

(3) To the Governor: the copies of the transcripts required by Penal Code section 1218, with copies of any corrected or augmented pages inserted.

(e) Subsequent trial court orders; omissions

(1) If, after the record is certified, the trial court amends or recalls the judgment or makes any other order in the case, including an order affecting the sentence, the clerk must promptly certify and send a copy of the amended abstract of judgment or other order—as an augmentation of the record—to the persons and entities listed in (d).

(2) If, after the record is certified, the superior court clerk or the reporter learns that the record omits a document or transcript that any rule or court order requires to be included, the clerk must promptly copy and certify the document or the reporter must promptly prepare and certify the transcript. Without the need for further court order, the clerk must send the document or transcript—as an augmentation of the record—to the persons and entities listed in (d).

Rule 35.3 adopted effective January 1, 2004.

Advisory Committee Comment (2004)

Revised rule 35.3 has limited application, as explained in subdivision (a). It restates portions of former rule 35 relating to death penalty appeals, supplemented by new provisions derived from former rules 39.52–39.55.

Subdivision (b). Revised rule 35.3(b) is based on former rule 35(b) and (c)(1)–(3). Filling a gap, revised rule 35.3(b)(1) and (2) require that the transcripts be sent to the Habeas Corpus Resource Center as well as the California Appellate Project. Both entities bear responsibilities in the postconviction process.

Former rule 35(b) specified that computer-readable copies of the transcript must be on "CD-ROM or 3.5-inch disks." Rather than enshrining any particular technology in these rules, however, revised rule 35.3(b)(2) simply states that computer-readable copies must comply with the relevant statute (Code Civ. Proc., § 271(b)) and "any additional requirements prescribed by the Supreme

Court." The change is not meant to be substantive, but to provide the flexibility necessary to ensure the record-preparation process remains current with evolving computer technology. The date-labeling requirement is derived from former rules 39.52(i)(6) and 39.54(f).

Subdivision (c). Revised rule 35.3(c) is based on former rule 35(c)(4). The revised subdivision provides for augmentation of the record (in addition to correction), consistently with practice and with the law governing death penalty appeals in post-1996 cases (see Pen. Code, § 190.8(a) and former rule 39.54).

The second sentence of paragraph (1) of revised rule 35.3(c) is a substantive change intended to expedite record correction and facilitate Supreme Court supervision of the process.

The second sentence of paragraph (4) of revised rule 35.3(c) fills a gap and reflects current practice. Former rule 35(c)(4) also directed the court to determine which corrections had "sufficient potential significance" to require them to be furnished to the parties in the form of corrected pages, and directed that the corrections be made "by strikeover and interlineations where possible." The revised rule deletes these provisions as unnecessary micromanagement of the correction process and as inconsistent with the intent of the statutes and rules governing death penalty appeals in post-1996 cases.

Paragraph (5) of revised rule 35.3(c) is a substantive change intended to facilitate Supreme Court supervision of the process of record correction while preserving the trial court's discretion to extend time to comply with its orders.

Paragraphs (6) and (7) of revised rule 35.3(c) fill gaps in the correction process. They are derived from former rule 39.54(d)(3) and (4), respectively.

Paragraph (8) of revised rule 35.3(c) is derived from former Penal Code section 190.8 and is intended to facilitate Supreme Court supervision of the process of record correction.

Subdivision (d). Former rule 35(e) directed the clerk, after the record was certified, to send the parties "notices enumerating all corrections ordered and stating a date of certification," as well as copies of all the corrected transcript pages. Under revised rule 35.3(c)(6), however, the corrected pages are sent to the parties before certification, and to send a belated list of "all corrections ordered" would serve little purpose. Revised rule 35.3(d) therefore deletes these directives in favor of a copy of the certification order for the parties and a copy of the transcripts and corrected pages for the Governor.

Subdivision (e). Revised rule 35.3(e) is derived from the last two paragraphs of former rule 35(e).

Former rule 35(e). Former rule 35(e) also provided for the transmission of certain exhibits in criminal appeals. Revised rule 36.1 now governs the transmission of exhibits in death penalty appeals.

Rule 36. Briefs

(a) Contents and form

Except as provided in this rule, briefs in appeals from judgments of death must comply as nearly as possible with rules 13 and 14.

(b) Length

(1) A brief produced on a computer must not exceed the following limits, including footnotes:

(A) Appellant's opening brief and respondent's brief: 95,200 words.

(B) Reply brief: 47,600 words.

(C) Petition for rehearing and answer: 23,800 words.

(2) A brief under (1) must include a certificate by appellate counsel stating the number of words in the brief; counsel may rely on the word count of the computer program used to prepare the brief.

(3) A typewritten brief must not exceed the following limits:

(A) Appellant's opening brief and respondent's brief: 280 pages.

(B) Reply brief: 140 pages.

(C) Petition for rehearing and answer: 70 pages.

(4) The tables, a certificate under (2), and any attachment permitted under rule 14(d) are excluded from the limits stated in (1) or (3).

(5) On application, the Chief Justice may permit a longer brief for good cause.

(c) Time to file

(1) Except as provided in (2), the times to file briefs in an appeal from a judgment of death are as follows:

(A) The appellant's opening brief must be served and filed within 210 days after the record is certified as complete or the superior court clerk delivers the completed record to the defendant's appellate counsel, whichever is later. The Supreme Court clerk must promptly notify the defendant's appellate counsel and the Attorney General of the due date for the appellant's opening brief.

(B) The respondent's brief must be served and filed within 120 days after the appellant's opening brief is filed. The Supreme Court clerk must promptly notify the defendant's appellate counsel and the Attorney General of the due date for the respondent's brief.

(C) If the clerk's and reporter's transcripts combined exceed 10,000 pages, the time limits stated in (A) and (B) are extended by 15 days for each 1,000 pages of combined transcript over 10,000 pages.

(D) The appellant must serve and file a reply brief, if any, within 60 days after the respondent files its brief.

(2) In any appeal from a judgment of death imposed after a trial that began before January 1, 1997, the time to file briefs is governed by rule 33(c).

(3) The Chief Justice may extend the time to serve and file a brief for good cause.

(d) Supplemental briefs

Supplemental briefs may be filed as provided in rule 29.1(d).

(e) Amicus curiae briefs

Amicus curiae briefs may be filed as provided in rule 29.1(f).

(f) Briefs on the court's request

The court may request additional briefs on any or all issues.

(g) Service

(1) The Supreme Court Policy on Service of Process by Counsel for Defendant governs service of the defendant's briefs.

(2) The Attorney General must serve two copies of the respondent's brief on each defendant's appellate counsel and, for each defendant sentenced to death, one copy on the California Appellate Project in San Francisco.

(3) A copy of each brief must be served on the superior court clerk for delivery to the trial judge.

(h) Judicial notice

To obtain judicial notice by the Supreme Court under Evidence Code section 459, a party must comply with rule 22(a).

Rule 36 repealed and adopted effective January 1, 2004.

Former rule
Former rule 36 repealed effective January 1, 1004. The former rule related to agreed or settled statement.

Advisory Committee Comment (2004)

Revised rule 36 is based primarily on former rules 37 and 39.57.

Subdivision (a). Revised rule 36(a) restates former rule 37(c).

Subdivision (b). Revised rule 36(b)(1) states the maximum permissible lengths of briefs produced on a computer in terms of word count rather than page count. This substantive change tracks a provision in revised rule 14(c) governing Court of Appeal briefs, and is explained in the comment to that provision. Each word count assumes a brief using one-and-one-half spaced lines of text, as permitted by rule 14(b)(5).

Filling a gap, paragraphs (1)(C) and (3)(C) of revised rule 36(b) provide for the maximum permissible length of an answer to a petition for rehearing.

Filling a gap, revised rule 36(b)(4) provides that any attachment under rule 14(d) is to be excluded in calculating the length of a brief. The provision is derived from revised rule 14(c)(3).

Subdivision (c). Subdivision (c)(1) of revised rule 36 restates former rule 39.57; subdivision (c)(2) restates former rule 39.50(a) insofar as it applied to the time to file briefs.

Former rule 39.57(e) provided that the Supreme Court could extend the time to serve and file briefs for good cause, "in accordance with the policies and factors contained in rule 45.5, to the extent they are applicable." Revised rule 36(c)(3) recognizes that this power is vested in the Chief Justice (see rule 45(c)), and deletes the cross-reference to rule 45.5 as unnecessary. No substantive change is intended.

Subdivisions (d) and (e). Revised rule 36(d) and (e) are cross-reference provisions added to clarify the applicability of rule 29.1(d) and (f) to death penalty appeals.

Subdivision (f). Revised rule 36(f) fills a gap by recognizing the Supreme Court's practice of requesting supplemental briefs when necessary.

Subdivision (g). Revised rule 36(g)(1) is a cross-reference to Policy 4 of the Supreme Court Policies Regarding Cases Arising From Judgments of Death. The requirement of revised rule 36(g)(2) that the Attorney General serve the California Appellate Project in San Francisco states current practice.

Subdivision (h). Revised rule 36(h) is a cross-reference provision added to clarify the applicability of rule 22(a) to death penalty appeals.

Rule 36.1. Transmitting exhibits ~~in death penalty appeals~~; augmenting the record in the Supreme Court

(a) Application

Except as provided in this rule, rule 18 governs the transmission of exhibits to the Supreme Court ~~in death penalty appeals~~.

(Subd (a) amended effective January 1, 2004.)

(b) Time to file notice of designation

No party may file a notice designating exhibits under rule 18(a) until the Supreme Court clerk notifies the parties of the time and place of oral argument.

(c) Augmenting the record in the Supreme Court

At any time, on motion of a party or on its own motion, the Supreme Court may order the record augmented or corrected as provided in rule 12.

(Subd (c) adopted effective January 1, 2004.)

Rule 36.1 amended effective January 1, 2004; adopted effective January 1, 2003.

Advisory Committee Comment (2004)

Subdivision (c). Revised rule 36.1(c) is new. It is not a substantive change, but is a cross-reference inserted in this rule to clarify the applicability of rule 12 to death penalty appeals.

Advisory Committee Comment (2003)

New rule 36.1(b) restates the first clause of former rule 10(d) insofar as it applies to death penalty appeals.

Rule 36.2. Oral argument and submission of the cause ~~in death penalty appeals~~

(a) Application

Except as provided in this rule, rule 29.2 governs oral argument and submission of the cause in the Supreme Court ~~in death penalty appeals~~ unless the court provides otherwise in its Internal Operating Practices and Procedures or by order.

(Subd (a) amended effective January 1, 2004.)

(b) Procedure

(1) The appellant has the right to open and close.

(2) Each side is allowed 45 minutes for argument.

(3) Two counsel may argue on each side if, ~~not later than 10 days before~~ within 10 days after the date of the order setting the case for argument, they notify the court that the case requires it.

(Subd (b) amended effective January 1, 2004.)

Rule 36.2 amended effective January 1, 2004; adopted effective January 1, 2003.

Advisory Committee Comment (2004)

Subdivision (b). Former rule 22(d) required counsel to notify the court not later than 10 days before "the date of the argument" if two counsel wanted to argue a death penalty appeal on each side; subdivision (b)(3) of revised rule 36.2 requires the same notice within 10 days after "the date of the order setting the case for argument." The purpose of the change is to coordinate this provision with the provision governing requests to divide oral argument among multiple counsel in noncapital appeals (rule 29.2(f)(2)). In most cases, however, the revised wording will yield a deadline identical to or no later than that resulting from the former wording, because of the provision requiring the clerk to give the parties at least 20 days' notice of the date of the argument (rule 29.2(c)).

Advisory Committee Comment (2003)

New rule 36.2(b) restates without change former rule 22 insofar as it applies to death penalty appeals.

Rule 36.3. Filing, finality, and modification of decision; rehearing; remittitur

Rules 29.4 through 29.6 govern the filing, finality, and modification of decision, rehearing, and issuance of remittitur by the Supreme Court in an appeal from a judgment of death.

Rule 36.3 adopted effective January 1, 2004.

Advisory Committee Comment (2004)

Revised rule 36.3 is new but is not a substantive change. It clarifies the applicability, to death penalty appeals, of the relevant rules governing the decision of civil appeals in the Supreme Court.

~~**Rule 37. Briefs**~~

~~**(a) [Time and service]** The appellant's opening brief shall be served and filed within 40 days after the filing of the record in the reviewing court. The respondent's brief shall be served and filed within 30 days after the filing of the appellant's opening brief. The appellant's reply brief, if any, shall be served and filed within 20 days after filing of the respondent's brief. The time for filing a brief in a criminal case shall not be extended by stipulation of the parties. Every brief of the defendant shall be served on both the district attorney and the Attorney General and, unless the defendant has expressly requested otherwise in writing, a copy shall be sent to the defendant. Counsel's signed statement that a copy of the brief was sent to the defendant or that counsel has the defendant's written request that briefs not be sent to the defendant is adequate proof thereof; the defendant's address need not be given in the statement. The People shall serve two copies of their briefs on appellate defense counsel, if appointed. All briefs shall be served on the clerk of the superior court for delivery to the judge who presided at the trial, as provided in rule 15(c).~~

~~*(Subd (a) amended effective January 1, 2002; previously amended effective July 1, 1983, July 1, 1987, January 1, 1990, and July 1, 1995.)*~~

~~**(b)–(e) *****~~

~~Rule 37 repealed effective January 1, 2004; previously amended effective January 1, 2002; previously amended effective May 14, 1983, July 1, 1983, July 1, 1987, July 1, 1989, January 1, 1990, July 1, 1995, and July 1, 1996.~~

Rule 39.1. Special rule for dependency and freedom from custody appeals

(a)–(c) ***

(d) Copies of briefs notwithstanding rules 16(c)~~,~~ ~~and~~ 37(a) and 44.5, the parties ~~shall~~ must not serve briefs on the Attorney General or the district attorney unless that office represents a party. If the Court of Appeal has appointed appellate counsel for any party, the county child welfare department must serve two copies of its briefs on that counsel and one copy of its briefs on the appellate project for the district, if applicable.

(Subd (d) amended effective January 1, 2004.)

(e)–(f) ***

Rule 39.1 amended effective January 1, 2004; adopted effective July 1, 1987; previously amended effective January 1, 1992, January 1, 1994, January 1, 1995, and January 1, 2001. The repealed rule related to briefs.

Rule 44. Form and filing of papers

(a) Form

Except as otherwise provided in these rules, all papers filed in a reviewing court may be either produced on a computer or typewritten ~~or proportionally spaced at the option of the party filing them. If typewritten, they shall conform, as far as practicable, to the requirements of subdivision (c) of rule 15. If proportionally spaced, they shall conform, as far as practicable, to the requirements of subdivision (d) of rule 15~~ and must comply with the relevant provisions of rule 14(b). All copies of papers must be clear and legible. The use of recycled paper ~~shall be~~ is required for all papers filed with the court or served on the parties. The use of recycled paper for the cover of the brief is encouraged.

(Subd (a) amended effective January 1, 2004; previously amended January 1, 1959, July 1, 1974, January 1, 1993, January 1, 1994, January 1, 1995, and July 1, 1996.)

(b) Number of copies

If a brief, paper, or document, other than the record, is filed in a reviewing court the following number of copies ~~shall~~ must be filed:

(1) If filed in the Supreme Court:

~~(i)~~(A) An original and 13 copies of a petition for review ~~or other petition~~, ~~or~~ an answer, ~~opposition, or other response to a petition~~ or a reply;~~.~~

~~(ii)~~(B) An original and ~~14~~ 13 copies of a brief in a cause pending in that court~~.~~;

(C) An original and 10 copies of a petition for a writ within the court's original jurisdiction or an opposition or other response to the petition;~~.~~

~~(iii)~~(D) An original and 8 copies of a notice of motion, motion, or opposition or other response to a motion~~.~~;

(E) An original and 8 copies of a federal exhaustion petition for review, an answer, or a reply; and

~~(iv)~~(F) An original and one copy of any other document or paper.

(2) If filed in a Court of Appeal:

~~(i)~~(A) An original and 4 copies of a petition or an answer, opposition, or other response to a petition.;

~~(ii)~~(B) An original and 4 copies of a brief and, in civil appeals, proof of delivery of 5 copies to the Supreme Court~~.~~;

~~(iii)~~(C) An original and 3 copies of a notice of motion, motion, or opposition or other response to a motion~~.~~; and

~~(iv)~~(D) An original and one copy of any other document or paper.

(Subd (b) amended effective January 1, 2004; previously amended effective January 1, 1951, January 2, 1962, November 11, 1966, January 1, 1972, July 1, 1973, May 6, 1985, July 1, 1989, and January 1, 1996, and July 1, 1996.)

(c) ~~[~~Covers~~]~~

So far as practicable, the covers of briefs and petitions should be in the following colors:

Appellant's opening brief (rule ~~16~~13(a))..... green
Respondent's brief (rule ~~16~~13(a))..... yellow
Appellant's reply brief (rule ~~16~~13(a))..... tan
Amicus curiae brief..... gray
Petition for rehearing..... orange
Answers to petition for rehearing..... blue
Petition for original writ or answer (opposition) to writ petition..... red
Petition for review (rule 28~~(b)~~(a))…..... white
Answer to petition for review (rule 28~~(c)~~(a))..... blue
Reply to answer (rule 28~~(d)~~(a))…..... white
Petitioner's brief on the merits (rule ~~29.3~~29.1(a)…..…..….…..... white
Answer brief on the merits (rule ~~29.3~~ 29.1(a))..…..... blue
Reply brief on the merits (rule 29.1(a))..... white

A brief or petition not conforming to this subdivision ~~shall~~ must be accepted for filing; but in the case of repeated violations by an attorney or party, the court may proceed as provided in rule ~~18~~14(e).

(Subd (c) amended effective January 1, 2004; adopted effective January 1, 1984; previously amended effective May 6, 1985.

(d) Attorneys' names, addresses, telephone numbers, State Bar numbers

Every brief and other paper filed in a reviewing court ~~shall~~ must contain on the cover, or on the first page if there is no cover, the name, address, and telephone number of the attorney filing the paper, and the California State Bar membership number of that attorney and of every attorney who joins in the brief or paper. California State Bar membership numbers of the supervisors in a law firm or public law office of the attorney responsible for the case need not be stated.

~~Until July 1, 1994, a brief or other paper shall not be rejected for filing because the attorney's California State Bar membership number is missing, but it may be stricken if the attorney does not furnish the number promptly upon request by the clerk.~~

(Subd (d) amended effective January 1, 2004; adopted effective August 1, 1993.)

Rule 44 amended effective January 1, 2004; previously amended effective January 1, 1984, May 6, 1985, July 1, 1987, January 1, 1993, August 1, 1993, January 1, 1994, January 1, 1996, and July 1, 1996.

Rule 44.5. Service on public officer or agency

(a) Service on the Attorney General

In addition to any statutory requirements for service of briefs on public officers or agencies, a party must serve its brief or petition on the Attorney General if the brief or petition:

(1) Questions the constitutionality of a state statute; or

(2) Is filed on behalf of the State of California, a county, or an officer whom the Attorney General may lawfully represent in:

(A) a criminal case,

(B) a case in which the state or a state officer in his or her official capacity is a party, and

(C) a case in which a county is a party, unless the county's interest conflicts with that of the state or a state officer in his or her official capacity.

(b) Proof of service

When a statute or this rule requires a party to serve any document on a nonparty public officer or agency, the party must file proof of such service with the document unless a statute permits service after the document is filed, in which case the proof of service must be filed immediately after the document is served on the public officer or agency.

(c) Identification on cover

When a statute or this rule requires a party to serve any document on a nonparty public officer or agency, the cover of the document must contain a statement that identifies the statute or rule requiring service of the document on the public officer or agency in substantially the following form: "Service on [insert name of the officer or agency] required by [insert citation to the statute or rule]."

Rule 44.5 adopted effective January 1, 2004.

Advisory Committee Comment (2004)

Rule 44.5 refers to statutes that require a party to serve documents on a nonparty public officer or agency. For a list of such statutory requirements, please see Judicial Council form APP-004, the *Civil Case Information Statement*.

Rule 56. Original proceedings

(a) ***

(b) Points and authorities and service

A petition for the issuance of such a writ shall be accompanied by points and authorities and by proof of service of both on the respondent and any real party in interest named in the petition. The proof of service shall name each party represented by each attorney served; a petition accompanied by a defective proof of service shall be filed, but if a proper proof of service is not filed within five days, the court may strike the petition or impose a lesser sanction. No statement in opposition to the petition is required unless requested by the court, but within five days after service and filing, the respondent or any real party in interest or both, separately or jointly, may serve and file points and authorities in opposition and a statement of any fact considered material not included in the petition. The court in its discretion (1) may allow the filing of the petition without service, and (2) may deny the petition or issue an alternative writ without first requesting

the filing of opposition. Additionally, ~~service in unfair competition cases under Business and Professions Code section 17200 et seq. must comply with rule 15(e)(2).~~ the petition must be served on a public officer or agency when required by statute or rule 44.5.

(Subd (b) amended effective January 1, 2004; previously amended effective January 1, 1951, July 1, 1964, January 1, 1984, July 1, 1985, July 1, 2000, and January 1, 2002.)

(c)–(h) ***

(i) Proceedings not covered by this rule

The provisions of this rule shall not apply to applications for a writ of habeas corpus, except as provided in rule 56.5, or to petitions for review pursuant to rules 57, 58, and 59.

(Subd (i) amended effective January 1, 2004; relettered effective January 1, 1984; January 1, 1988, January 1, 2001, and January 1, 2002.)

(j) ***

~~**(k) [Unfair competition cases]** In an unfair competition proceeding under Business and Professions Code section 17200 et seq., each brief and each petition shall contain the following statement on the front cover: "Unfair competition case. (See Bus. & Prof. Code, § 17209 and Cal. Rules of Court, rule 15(e)(2).)"~~

(Subd (k) repealed effective January 1, 2004; adopted as subd (i) effective July 1, 2000; relettered as subd (j) effective January 1, 2001; amended and relettered as subd (k) effective January 1, 2002.)

Rule 56 amended effective January 1, 2004; previously amended effective January 1, 1951, January 1, 1959, January 1, 1984, July 1, 1985, January 1, 1988, August 1, 1993, January 1, 1997, July 1, 2000, January 1, 2001, and January 1, 2002.

Rule 56.5. Original proceedings seeking release or modification of custody

(a) [Use of Judicial Council form required]

A petition to a reviewing court for a writ of habeas corpus, or for any other writ within its original jurisdiction, seeking the release from or modification of the conditions of custody of one who is confined under the process of any court of this State in a State or local penal institution, hospital, narcotics treatment facility, or other institution must be on a form adopted by the Judicial Council. Any such petition is exempt from the

provisions of rule 56 relating to form and content of a petition and requiring a petition to be accompanied by points and authorities.

(Subd (a) amended effective January 1, 2004; previously amended effective January 1, 2003.)

(b) Exception for good cause

For good cause the court may permit the filing of a petition that does not comply with the provisions of subdivision (a) of this rule.

(Subd (b) amended effective January 1, 2004.)

(c) Petitions filed by attorneys

If the petition is filed by an attorney:

(1) The petition need not be on the form specified in (a) but must contain the pertinent information specified in that form and must comply with the requirements of rule 14(a) and (b);

(2) If the petition is accompanied by a memorandum of points and authorities, the memorandum must comply with the requirements of rule 14(a) and (b); ~~and~~

(3) The petition must be accompanied by a lodged copy of any related petition (excluding exhibits) previously filed in any lower state court, or in any federal court, pertaining to the same judgment and petitioner. If such documents have previously been lodged with the Supreme Court, the petition need only so state~~.~~; and

(4) Any supporting documents accompanying the petition must comply with the requirements of rule 56(d).

(Subd (c) amended effective January 1, 2004; adopted effective July 1, 1995; previously amended effective January 1, 2003.)

(d) ***

Rule 56.5 amended effective January 1, 2004; adopted effective January 1, 1966; previously amended effective July 1, 1995, and January 1, 2003.

Rule 204. Scope and purpose of the case management rules

The rules in this chapter are to be construed and administered to secure the fair, timely, and efficient disposition of every civil case. The rules are to be applied in a fair, practical, and flexible manner so as to achieve the ends of justice.

Rule 204 adopted effective January 1, 2004.

Rule 208. Delay reduction goals

(a) [Case management goals] The rules in this chapter are adopted to advance the goals of section 68607 of the Government Code and section 2 of the California Standards of Judicial Administration recommended by the Judicial Council within the time limits specified in section 68616 of the Government Code.

(b) [Case disposition time goals] The goal of the court is to manage general civil cases from filing to disposition as provided under section~~s~~ 2.1 ~~and 2.3~~ of the California Standards of Judicial Administration.

(Subd (b) amended effective January 1, 2004; previously amended effective January 1, 1994, and July 1, 2002.)

(c) [Judges' responsibility] It is the responsibility of judges to achieve a just and effective resolution of each general civil case through active management and supervision of the pace of litigation from the date of filing to disposition.

Rule 208 amended effective January 1, 2004; adopted as rule 2104 effective July 1, 1991; previously amended January 1, 1994; renumbered and amended effective July 1, 2003.

Rule 209. Differentiation of cases to achieve goals

(a) [Evaluation and assignment] The court must evaluate each case on its own merits as provided in rule 210, under procedures adopted by local court rules. After evaluation, the court must:

(1) assign ~~each case to one of the three case management plans listed in (b)~~ the case to the case management program for review under rule 212 for disposition under the case disposition time goals in (b) of this rule; or

(2) exempt the case as an exceptional case under ~~(d)~~(c) of this rule from the case disposition time goals specified in rule 208(b) and monitor it with the goal of disposing of it within three years; or

(3) assign the case under ~~(e)~~ (d) of this rule to ~~the~~ a local case management plan for disposition within six to nine months after filing.

(Subd (a) amended effective January 1, 2004; previously amended effective July 1, 2002.)

(b) ~~[Case management plans]~~ ~~Time of disposition under the following case management plan is, from the date of filing:~~

~~(1) Plan 1: 12 months;~~

~~(2) Plan 2: 18 months;~~

~~(3) Plan 3: 24 months.~~

[Civil case disposition time goals] Civil cases assigned to the case management program for review under rule 212 should be managed so as to achieve the following goals:

(1) *(Unlimited civil cases)* The goal of each trial court should be to manage unlimited civil cases from filing so that:

(A) 75 percent are disposed of within 12 months;

(B) 85 percent are disposed of within 18 months; and

(C) 100 percent are disposed of within 24 months.

(2) *(Limited civil cases)* The goal of each trial court should be to manage limited civil cases from filing so that:

(A) 90 percent are disposed of within 12 months;

(B) 98 percent are disposed of within 18 months; and

(C) 100 percent are disposed of within 24 months.

(3) *(Individualized case management)* The goals in (1) and (2) are guidelines for the court's disposition of all unlimited and limited civil cases filed in that court. In managing individual civil cases, the court

must consider each case on its merits. To enable the fair and efficient resolution of civil cases, each case should be set for trial as soon as appropriate for that individual case consistent with rule 212(j).

(Subd (b) amended effective January 1, 2004; previously amended effective July 1, 2002.)

~~**(c) [Case management Plan 1]** The court may by local rule presume that a case is subject to the disposition goal under case management Plan 1 when the case is filed or as otherwise provided by the court. The court may modify the assigned case management plan at any time for good cause shown.~~

(Subd (c) repealed effective January 1, 2004; amended effective January 1, 1994 and effective July 1, 2002.)

~~(d)~~(c) [Exemption of exceptional cases]

(1) The court may in the interest of justice exempt a general civil case from the case disposition time goals under rule 208(b) if it finds the case involves exceptional circumstances that will prevent the court and the parties from meeting the goals and deadlines imposed by the program. In making the determination, the court is guided by rules 210 and 1800.

(2) If the court exempts the case from the case disposition time goals, the court must establish a case progression plan and monitor the case to ensure timely disposition consistent with the exceptional circumstances, with the goal of disposing of the case within three years.

(Subd (c) amended and lettered effective January 1, 2004; adopted as subd (d) effective July 1, 1991; previously amended effective January 1, 2000, and July 1, 2002.)

~~(e)~~(d) [Local case management plan for expedited case disposition]

(1) For expedited case disposition, the court may by local rule adopt a case management plan that establishes a goal for disposing of appropriate cases within six to nine months after filing. The plan must establish a procedure to identify the cases to be assigned to the plan.

(2) The plan must be used only for uncomplicated cases amenable to early disposition that do not need a case management conference or review or similar event to guide the case to early resolution.

(Subd (d) amended and relettered effective January 1, 2004; adopted as subd (e) effective July 1, 1991; previously amended effective January 1, 1994, and July 1, 2002.)

Rule 209 amended effective January 1, 2004; adopted as rule 2105 effective July 1, 1991; previously amended effective January 1, 1994, and January 1, 2000; amended and renumbered effective July 1, 2002.

Rule 212. Case management conference; meet-and-confer requirement; and case management order

(a) [Initial case management review] In every general civil case except complex cases and cases exempted under rules 207(c)–(d), 209(d)–(e), ~~and~~ 214, and 243.8, the court must review the case no later than 180 days after the filing of the initial complaint.

(Subd (a) amended effective January 1, 2004; adopted effective July 1, 2002.)

(b) [Case management conference]

(1) *(Case management conference)* In each case, the court must set ~~a~~ an initial case management conference to review the case. At the conference, the court must review the case comprehensively and decide whether to assign the case to an alternative dispute resolution process, whether to set the case for trial, and the other matters stated in this rule. The initial case management conference should generally be the first case management event conducted by court order in each case, except for orders to show cause.

(2) *(Notice of the conference)* Notice of the date of the case management conference must be given to all parties no later than 45 days before the conference, unless otherwise ordered by the court. The court may provide by local rule for the time and manner of giving notice to the parties.

(3) *(Appearances at the conference)* At the conference, counsel for each party and each self-represented party must appear personally or, if permitted under rule 298(c)(2), by telephone~~,~~; must be familiar with the case~~,~~; and must be prepared to discuss and commit to the party's position on the issues listed in (e)~~,~~ and (f).

~~(2)~~(4) *(Case management order without appearance)* If, based on its review of the written submissions of the parties and such other information as is available, the court determines that appearances at the conference are not necessary, the court may issue a case management order and notify the parties that no appearance is required.

~~(3)~~(5) *(Option to excuse attendance at conferences in limited civil cases)* In all general civil cases except those exempted under (a), the court must review the case and issue a case management order under this rule, but by local rule the court may provide that counsel and self-represented parties are not to attend a case management conference in limited civil cases~~,~~ unless ordered to do so by the court.

(Subd (b) amended effective January 1, 2004; adopted as subd (a) effective January 1, 1985; amended and relettered effective July 1, 2002.)

(c) ~~[Special order or request for a case management conference]~~ [Additional case management conferences] The court on its own motion may order, or a party or parties may request, that ~~a~~ an additional case management conference be held at any time. A party should be required to appear at an additional conference only if an appearance is necessary for the effective management of the case. In determining whether to hold an additional conference, the court must consider each case individually on its own merits.

(Subd (c) amended effective January 1, 2004; adopted effective July 1, 2002.)

(d) [Arbitration determination] In courts having a judicial arbitration program under Code of Civil Procedure section 1141.11, the court at the time of the case management conference or review must determine if the case is suitable for judicial arbitration.

(e) [Subjects to be considered at the case management conference] In any case management conference or review under this rule, the parties must address, if applicable, and the court may take appropriate action with respect to, the following:

(1) Whether there are any related cases;

(2) Whether all parties named in the complaint or cross-complaint have been served, have appeared, or have been dismissed;

(3) Whether any additional parties may be added or the pleadings may be amended;

(4) Whether, if the case is a limited civil case, the economic litigation procedures under Code of Civil Procedure section 90 et seq. will apply to it or the party intends to bring a motion to exempt the case from these procedures;

(5) Whether any other matters (e.g., the bankruptcy of a party) may affect the court's jurisdiction or processing of the case;

(6) Whether the parties have stipulated to, or the case should be referred to, judicial arbitration or any other form of alternative dispute resolution (ADR) and, if so, the date by which the ADR must be completed;

(7) Whether an early settlement conference should be scheduled and, if so, on what date;

(8) Whether discovery has been completed and, if not, the date by which it will be completed;

(9) What discovery issues are anticipated;

(10) Whether the case should be bifurcated or a hearing should be set for a motion to bifurcate under section 598 of the Code of Civil Procedure;

(11) Whether there are any cross-complaints that are not ready to be set for trial and, if so, whether they should be severed;

(12) Whether the case is entitled to any statutory preference and, if so, the statute granting the preference;

(13) Whether a jury trial is demanded, and, if so, the identity of each party requesting a jury trial;

(14) If the trial date has not been previously set, the date by which the case will be ready for trial and the available trial dates;

(15) The estimated length of trial;

(16) The nature of the injuries;

(17) The amount of damages, including any special or punitive damages;

(18) Any additional relief sought;

(19) Whether there are any insurance coverage issues that may affect the resolution of the case; and

(20) Any other matters that should be considered by the court or addressed in its case management order.

(Subd (e) amended effective January 1, 2004; adopted effective July 1, 2002.)

(f) [Meet-and-confer requirement] Unless the court orders another time period, no later than 30 calendar days before the date set for the case management conference, the parties must meet and confer, in person or by telephone, to consider each of the issues identified in (e) and, in addition, to consider the following:

(1) Resolving any discovery disputes and setting a discovery schedule;

(2) Identifying and, if possible, informally resolving any anticipated motions;

(3) Identifying the facts and issues in the case that are uncontested and may be the subject of stipulation;

(4) Identifying the facts and issues in the case that are in dispute;

(5) Determining whether the issues in the case can be narrowed by eliminating any claims or defenses by means of a motion or otherwise;

(6) Possible settlement; ~~and~~

(7) Identifying the dates on which all parties and their attorneys are available or not available for trial, including the reasons for unavailability; and

~~(7)~~(8) Other relevant matters.

(Subd (f) amended effective January 1, 2004; adopted as subd (b) effective July 1, 1999; previously amended effective January 1, 2000; amended and relettered effective July 1, 2002.)

(g) [Case management statement]

(1) *(Timing of statement)* No later than 15 calendar days before the date set for the case management conference or review, each party must file a case management statement and serve it on all other parties in the case.

(2) *(Contents of statement)* Parties must use the mandatory *Case Management Statement* (form CM-110). All applicable items on the form must be completed. In lieu of each party's filing a separate case management statement, any two or more parties may file a joint statement under this rule.

(Subd (g) amended effective January 1, 2004; adopted as subd (c) effective July 1, 1999; previously amended effective January 1, 2001; relettered and amended effective July 1, 2002.)

(h) [Stipulation to alternative dispute resolution] If all parties agree to use an alternative dispute resolution (ADR) process, they must jointly complete the ADR stipulation form provided for under rule 201.9 and file it with the court.

(Subd (h) amended effective January 1, 2004; adopted effective July 1, 2002.)

(i) [Case management order] The case management conference must be conducted in the manner provided by local rule. The court must enter a case management order setting a schedule for subsequent proceedings and otherwise providing for the management of the case. The order should include such provisions as may be appropriate, including:

(1) Referral of the case to judicial arbitration or some other form of alternative dispute resolution;

(2) A date for completion of the arbitration process or other form of alternative dispute resolution process if the case has been referred to such a process;

(3) In the event that a trial date has not previously been set, a date certain for trial if the case is ready to be set for trial;

(4) Whether the trial will be a jury trial or a nonjury trial;

(5) The identity of each party demanding a jury trial;

(6) The estimated length of trial;

(7) Whether all parties necessary to the disposition of the case have been served or have appeared;

(8) The dismissal or severance of unserved or not-appearing defendants from the action;

(9) The names and addresses of the attorneys who will try the case;

(10) The date, time, and place for a mandatory settlement conference as provided in rule 222;

(11) The date, time, and place for the final case management conference before trial if such a conference is required by the court or the judge assigned to the case;

(12) The date, time, and place of any further case management conferences or review; and

(13) Any additional orders that may be appropriate, including orders on matters listed in (e) and (f).

(Subd (i) amended effective January 1, 2004; adopted as subd (b) effective January 1, 1985; previously relettered as subd (d) effective July 1, 1999; relettered and amended effective July 1, 2002.)

(j) **[Setting the trial date]** In setting a case for trial, the court, at the initial case management conference or at any other proceeding at which the case is set for trial, must consider all the facts and circumstances that are relevant. These may include:

(1) Type and subject matter of the action to be tried;

(2) Whether the case has statutory priority;

(3) Number of causes of action, cross-actions, and affirmative defenses that will be tried;

(4) Whether any significant amendments to the pleadings have been made recently or are likely to be made before trial;

(5) Whether the plaintiff intends to bring a motion to amend the complaint to seek punitive damages under section 425.13 of the Code of Civil Procedure;

(6) Number of parties with separate interests who will be involved in the trial;

(7) The complexity of the issues to be tried, including issues of first impression;

(8) Any difficulties in identifying, locating, or serving parties;

(9) Whether all parties have been served and, if so, the date by which they were served;

(10) Whether all parties have appeared in the action and, if so, the date by which they appeared;

(11) How long the attorneys who will try the case have been involved in the action;

(12) The trial date or dates proposed by the parties and their attorneys;

(13) The professional and personal schedules of the parties and their attorneys, including any conflicts with previously assigned trial dates or other significant events;

(14) The amount of discovery, if any, that remains to be conducted in the case;

(15) The nature and extent of law and motion proceedings anticipated, including whether any motions for summary judgment will be filed;

(16) Whether any other actions or proceedings that are pending may affect the case;

(17) The amount in controversy and the type of remedy sought;

(18) The nature and extent of the injuries or damages, including whether these are ready for determination;

(19) The court's trial calendar, including the pendency of other trial dates;

(20) Whether the trial will be a jury or a nonjury trial;

(21) The anticipated length of trial;

(22) The number, availability, and locations of witnesses, including witnesses who reside outside the county, state, or country;

(23) Whether there have been any previous continuances of the trial or delays in setting the case for trial;

(24) The achievement of a fair, timely, and efficient disposition of the case; and

(25) Any other factor that would significantly affect the determination of the appropriate date of trial.

(Subd (j) adopted effective January 1, 2004.)

~~(j)~~**(k) [Case management order controls]** The order issued after the case management conference or review controls the subsequent course of the action or proceeding unless it is modified by a subsequent order.

(Subd (k) relettered effective January 1, 2004; adopted as subd (j) effective July 1, 2002.)

Rule 212 amended effective January 1, 2004; adopted effective January 1, 1985; previously amended effective January 1, 1995, July 1, 1999, January 1, 2000, January 1, 2001, and July 1, 2002.

Former rule

Former rule 212 repealed effective January 1, 1985; adopted effective January 1, 1957; amended effective January 1, 1967. The former rule related to pretrial conferences.

Advisory Committee Comment (2004)

Regarding rule 212(c) on additional case management conferences, in many civil cases one initial conference and one other conference before trial will be sufficient. But in other cases including complicated or difficult cases, the court may order an additional case management conference or conferences if that would promote the fair and efficient administration of the case.

Rule 224. Duty to notify court and others of stay

(a) [Notice of stay] The party who requested or caused a stay of a proceeding must immediately serve and file a notice of the stay and attach a copy of the order or other document showing that the proceeding is stayed. If the person who requested or caused the stay has not appeared, or is not subject to the jurisdiction of the court, the plaintiff must immediately file a notice of the stay and attach a copy of the order or other document showing that the proceeding is stayed. The notice of stay must be served on all parties who have appeared in the case.

(b) [When notice must be provided] The party responsible for giving notice under (a) must provide notice if the case is stayed for any of the following reasons:

(1) An order of a federal court or a higher state court;

(2) Contractual arbitration under section 1281.4 of the Code of Civil Procedure;

(3) Arbitration of attorney fees and costs under section 6201 of the Business and Professions Code; or

(4) Automatic stay caused by a filing in another court, including a federal bankruptcy court.

(c) [Contents of notice] The notice must state whether the case is stayed with regard to all parties or only certain parties. If it is stayed with regard to only to certain parties, the notice must specifically identify those parties. The notice must also state the reason that the case is stayed.

(d) [Notice that stay is vacated] When a stay is vacated or is no longer in effect, the party who filed the notice of the stay must immediately serve and file a notice that the stay is vacated or is no longer in effect.

Rule 224 adopted effective January 1, 2004.

Rule 225. Duty to notify court and others of settlement ~~or stay~~

(a) [Notice of settlement]

(1) If a case is settled or otherwise disposed of, ~~the~~ each plaintiff or other party seeking affirmative relief must immediately file written notice of the settlement or other disposition with the court and serve the notice on all parties and any arbitrator or other court-connected alternative dispute resolution (ADR) neutral involved in the case. ~~The~~ Each plaintiff or other party seeking affirmative relief must also immediately give oral notice to all of the above if a hearing, conference, or trial is ~~imminent~~ scheduled to take place within 10 days.

(2) If the plaintiff or other party seeking affirmative relief does not notify an arbitrator or other court-connected ADR neutral involved in the case of a settlement at least 2 days before a scheduled hearing or session with that arbitrator or neutral, the court may order the party to compensate the arbitrator or other neutral for the scheduled hearing time. The amount of compensation ordered by the court must not exceed the maximum amount of compensation the arbitrator would be entitled to receive for service as an arbitrator under Code of Civil Procedure section 1141.18(b) or that the neutral would have been entitled to receive for service as a neutral at the scheduled hearing or session.

(Subd (a) amended effective January 1, 2004; previously amended effective January 1, 1989, July 1, 2001, and July 1, 2002.

(b) [Dismissal of case] Except as provided in (c), ~~the~~ each plaintiff or other party seeking affirmative relief must serve and file a request for dismissal within 45 days after the date of settlement. If the plaintiff or other party required to ~~does not~~ serve and file the request for dismissal does not do so, the court must dismiss the case 45 days after it receives notice of settlement unless good cause is shown why the case should not be dismissed.

(Subd (b) amended effective January 1, 2004; previously amended effective July 1, 2002; adopted effective January 1, 1989.)

(c) [Conditional settlement] If the settlement agreement conditions dismissal on the satisfactory completion of specified terms that are not to be performed within 45 days of the settlement, the notice of conditional settlement served and filed by each plaintiff or other party seeking affirmative relief must specify the date by which the dismissal is to be filed. If the plaintiff or other party required to ~~does not~~ serve and file a request for dismissal within 45 days after the dismissal date specified in the notice does not do so, the court must dismiss the case unless good cause is shown why the case should not be dismissed.

(Subd (c) amended effective January 1, 2004; adopted effective January 1, 1989; previously amended effective July 1, 2002.)

~~**(d) [Filing notice of stay]** This subdivision applies to cases stayed for the following reasons:~~

~~(1) Order of a federal court or a higher state court;~~
~~(2) Contractual arbitration under section 1281.4 of the Code of Civil Procedure;~~

~~(3) Arbitration of attorney fees and costs under section 6201 of the Business and Professions Code; or~~

~~(4) Automatic stay caused by a filing in another court.~~

~~The party who requested or caused the stay must immediately file a notice of the stay and attach a copy of the order or other document showing that the proceedings are stayed. If the person who requested or caused the stay has not appeared, or is not subject to the jurisdiction of the court, the plaintiff must immediately file a notice of the stay and attach a copy of the order or other document showing that the proceedings are stayed.~~

~~When a stay is vacated or is no longer in effect, the party who filed the notice of the stay must immediately file a notice that the stay is vacated or is no longer in effect.~~

(Subd (d) repealed effective January 1, 2004; adopted effective January 1, 1989; amended effective January 1, 1992, and July 1, 2002.)

Rule 225 amended effective January 1, 2004; adopted effective January 1, 1985; previously amended January 1, 1989, January 1, 1992, July 1, 2001, and July 1, 2002.

Rule 227. Sanctions in respect to rules

(a) [Applica~~bility~~tion] This sanctions rule applies to the rules in the California Rules of Court~~, Title Two, (Pretrial and Trial Rules)~~ relating to general civil cases, unlawful detainer cases, probate proceedings, civil proceedings in the appellate division of the superior court, and small claims cases.

(Subd (a) amended effective January 1, 2004; adopted effective July 1, 2001.)

(b) [Sanctions] In addition to any other sanctions permitted by law, the court may order a person, after written notice and an opportunity to be heard, to pay reasonable monetary sanctions to the court or an aggrieved person, or both, for failure to comply with the applicable rules ~~in Title Two~~, unless good cause is shown. For the purposes of this rule, "person" ~~includes~~ means a party, a party's attorney, ~~or~~ a witness, and an insurer or any other individual or entity whose consent is necessary for the disposition of the case. If a failure to comply with ~~a~~ an applicable rule ~~in Title Two~~ is the responsibility of counsel and not of the party, any penalty ~~shall~~ must be imposed on counsel and ~~shall~~ must not adversely affect the party's cause of action or defense thereto.

(Subd (b) amended effective January 1, 2004; adopted as untitled subdivision effective January 1, 1985; relettered and amended effective July 1, 2001; previously amended effective January 1, 1994.)

(c) [Notice and procedure] Sanctions ~~shall~~ must not be imposed under this rule except upon notice in a party's motion papers or upon the court's own motion after the court has provided notice and an opportunity to be heard. A party's motion for sanctions ~~shall~~ must (1) set forth the applicable rule ~~in Title Two~~ that has been violated, (2) describe the specific conduct that is alleged to have violated the rule, and (3) identify the attorney, law firm, party, ~~or~~ witness, or other person against whom sanctions are sought. The court on its own motion may issue an order to show cause that ~~shall~~ must (1) set forth the applicable rule ~~in Title Two~~ that has been violated, (2) describe the specific conduct that appears to have violated the rule, and (3) direct the attorney, law firm, party, ~~or~~ witness, or other person to show

cause why sanctions should not be imposed against them for violation of the rule.

(Subd (c) amended effective January 1, 2004; adopted effective July 1, 2001.)

(d) [Award of expenses] In addition to the sanctions awardable under (b), the court may order the person who has violated ~~a~~ an applicable rule ~~in Title Two~~ to pay to the party aggrieved by the violation that party's reasonable expenses, including reasonable attorney fees and costs, incurred in connection with the sanctions motion or the order to show cause.

(Subd (d) amended effective January 1, 2004; adopted effective July 1, 2001.)

(e) [Order] An order imposing sanctions ~~shall~~ must be in writing and ~~shall~~ must recite in detail the conduct or circumstances justifying the order.

(Subd (e) amended effective January 1, 2004; adopted effective July 1, 2001.)

Rule 227 amended effective January 1, 2004; adopted effective January 1, 1985; previously amended effective January 1, 1994 and July 1, 2001.

Rule 243.1. Sealed records

(a) [Applicability]

(1) Rules 243.1–243.4 apply to records sealed or proposed to be sealed by court order.

(2) These rules do not apply to records that are required to be kept confidential by law. These rules also do not apply to discovery motions and records filed or lodged in connection with discovery motions or proceedings. The rules do apply to discovery materials that are used at trial or submitted as a basis for adjudication of matters other than discovery motions or proceedings.

(b) [Definitions]

(1) "Record." Unless the context indicates otherwise, "record" as used in this rule means all or a portion of any document, paper, exhibit, transcript, or other thing filed or lodged with the court.

(2) "Sealed." A "sealed" record is a record that by court order is not open to inspection by the public.

(3) "Lodged." A "lodged" record is a record that is temporarily placed or deposited with the court but not filed.

(c) [Court records presumed to be open] Unless confidentiality is required by law, court records are presumed to be open.

(d) [Express factual findings required to seal records] The court may order that a record be filed under seal only if it expressly finds ~~that~~ facts that establish:

(1) There exists an overriding interest that overcomes the right of public access to the record;

(2) The overriding interest supports sealing the record;

(3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed;

(4) The proposed sealing is narrowly tailored; and

(5) No less restrictive means exist to achieve the overriding interest.

(Subd (d) amended effective January 1, 2004.)

(e) [Content and scope of the order]

(1) An order sealing the record must (i) specifically set forth the facts~~ual findings~~ that support the ~~order~~ findings and (ii) direct the sealing of only those documents and pages, ~~/~~or, if reasonably practicable, portions of those documents and pages, ~~/~~that contain the material that needs to be placed under seal. All other portions of each document~~s~~ or page must be included in the public file.

(2) Consistent with Code of Civil Procedure sections 639 and 645.1, if the records that a party is requesting be placed under seal are voluminous, the court may appoint a referee and fix and allocate the referee's fees among the parties.

(Subd (e) amended effective January 1, 2004.)

Rule 243.1 amended effective January 1, 2004; adopted effective January 1, 2001.

Advisory Committee Comment (2004)

This rule and rule 243.2 provide a standard and procedures for courts to use when a request is made to seal a record. The standard is based on *NBC Subsidiary (KNBC-TV), Inc. v. Superior*

Court (1999) 20 Cal.4th 1178. These rules apply to civil and criminal cases. They recognize the First Amendment right of access to documents used at trial or as a basis of adjudication. The rules do not apply to records that courts must keep confidential by law. Examples of confidential records to which public access is restricted by law are records of the family conciliation court (Family Code, § 1818(b)), ~~and~~ in forma pauperis applications (Cal. Rules of Court, rule 985(h)), and search warrant affidavits sealed under *People v. Hobbs* (1994) 7 Cal.4th 948. The sealed records rules also do not apply to discovery proceedings, motions, and materials that are not used at trial or submitted to the court as a basis for adjudication. (See *NBC Subsidiary*, *supra*, 20 Cal.4th at pp. 1208–1209, fn. 25.)

Rule 243.1(d)–(e) is derived from *NBC Subsidiary*. That decision contains the requirements that the court, before closing a hearing or sealing a transcript, must find an "overriding interest" that supports the closure or sealing, and must make certain express findings. (*Id*. at pp. 1217–1218). The decision notes that the First Amendment right of access applies to records filed in both civil and criminal cases as a basis for adjudication. (*Id.* at pp. 1208–1209, fn. 25.) Thus, the *NBC Subsidiary* test applies to the sealing of records.

NBC Subsidiary provides examples of various interests that courts have acknowledged may constitute "overriding interests." (See *id. a*t p.1222, fn. 46.) Courts have found that, under appropriate circumstances, various statutory privileges, trade secrets, and privacy interests, when properly asserted and not waived, may constitute "overriding interests." The rules do not attempt to define what may constitute an "overriding interest," but leave this to case law.

Rule 243.2 Procedures for filing records under seal

(a) [Court approval required] A record must not be filed under seal without a court order. The court must not permit a record to be filed under seal based solely upon the agreement or stipulation of the parties.

(b) [Motion or application to seal a record]

(1) A party requesting that a record be filed under seal must file a ~~noticed~~ motion or an application for an order sealing the record. The motion or application must be accompanied by a memorandum of points and authorities and a declaration containing facts sufficient to justify the sealing.

(2) A copy of the motion or application must be served on all parties who have appeared in the case. Unless the court orders otherwise, any party that already possesses copies of the records to be placed under seal must be served with a complete, unredacted version of all papers as well as a redacted version.

(3) (A) A party who files or intends to file with the court for the purposes of adjudication or to use at trial records produced in discovery that are subject to a confidentiality agreement or protective order, and does not intend to request to have the records sealed, must:

(i) lodge the unredacted records subject to the confidentiality agreement or protective order and any pleadings, memorandums, declarations, and other documents that disclose the contents of the records, in the manner stated in (d);

(ii) file copies of the documents in (i) that are redacted so that they do not disclose the contents of the records that are subject to the confidentiality agreement or protective order; and

(iii) give written notice to the party who produced the records that the records and the other documents lodged under (i) will be placed in the public court file unless that party files a timely motion or application to seal the records under this rule.

(B) If the party who produced the documents and was served with the notice under (A)(iii) fails to file a motion or an application to seal the records within 10 days or to obtain a court order extending the time to file such a motion or an application, the clerk must promptly remove all the documents in (A)(i) from the envelope or container where they are located and place them in the public file. If the party files a motion or an application to seal within 10 days or such later time as the court has ordered, these documents are to remain conditionally under seal until the court rules on the motion or application and thereafter are to be filed as ordered by the court.

~~(2)~~(4) The party requesting that a record be filed under seal must lodge it with the court under (d) when the motion or application is made, unless good cause exists for not lodging it or the record has previously been lodged under (3)(A)(i). Pending the determination of the motion or application, the lodged record will be conditionally under seal.

~~(3)~~(5) If necessary to prevent disclosure, ~~the~~ any motion or application, any opposition, and any supporting documents must be filed in a public redacted version and lodged in a complete version conditionally under seal.

~~(4)~~(6) If the court denies the motion or application to seal, the clerk must return the lodged record to the submitting party and must not place it in the case file unless that party notifies the clerk in writing within

10 days after the order denying the motion or application that the record is to be filed.

(Subd (b) amended effective January 1, 2004.)

(c) [References to nonpublic material in public records] A record filed publicly in the court must not disclose material contained in a record that is sealed, conditionally under seal, or subject to a pending motion or an application to seal.

(Subd (c) amended effective January 1, 2004.)

(d) [Lodging of records ~~that a party is requesting be placed under seal~~]

(1) ~~The party requesting that~~ A record that may be filed under seal must be put ~~it~~ in an ~~manila~~ envelope or other appropriate container, sealed in the envelope or container, and lodged ~~it~~ with the court.

(2) The envelope or container lodged with the court must be labeled "CONDITIONALLY UNDER SEAL."

(3) The party submitting the lodged record must affix to the envelope or container a cover sheet that:

~~(i)~~(A) Contains all the information required on a caption page under rule 201; and

~~(ii)~~(B) States that the enclosed record is subject to a motion or an application to file the record under seal.

(4) Upon receipt of a record lodged under this rule, the clerk must endorse the affixed cover sheet with the date of its receipt and must retain but not file the record unless the court orders it filed.

(Subd (d) amended effective January 1, 2004.)

(e) [Order]

(1) If the court grants an order sealing a record, the clerk must substitute on the envelope or container for the label required by (d)(2) a label prominently stating, "SEALED BY ORDER OF THE COURT ON *(DATE)*," and must replace the cover sheet required by (d)(3) with a filed-endorsed copy of the court's order.

(2) The order must state whether—in addition to records in the envelope or container—the order itself, the register of actions, any other court records, or any other records relating to the case are to be sealed.

(3) The order must state whether any person other than the court is authorized to inspect the sealed record.

~~(4) A sealed record must not be unsealed except upon order of the court.~~

(4) Unless the sealing order provides otherwise, it prohibits the parties from disclosing the contents of any materials that have been sealed in any subsequently filed records or papers.

(Subd (e) amended effective January 1, 2004.)

(f) [Custody of sealed records] Sealed records must be securely filed and kept separate~~ly~~ from the public file in the case.

(Subd (f) amended effective January 1, 2004.)

(g) [Custody of voluminous records] If the records to be placed under seal are voluminous and are in the possession of a public agency, the court may by written order direct the agency instead of the clerk to maintain custody of the original records in a secure fashion. If the records are requested by a reviewing court, the trial court must order the public agency to deliver the records to the clerk for transmission to the reviewing court under these rules.

(h) [Motion, application, or petition to unseal records]

(1) A sealed record must not be unsealed except upon order of the court.

(2) A party or member of the public~~, or the court on its own motion,~~ may move, apply, or petition, or the court on its own motion may move, to unseal a record. Notice of ~~the~~ any motion, application, or petition to unseal must be filed and served on ~~the~~ all parties in the case. The motion, application, or petition and any opposition, reply, and supporting documents must be filed in a public redacted version and a sealed complete version if necessary to comply with (c).

(3) If the court proposes to order a record unsealed on its own motion, the court must mail notice to the parties stating the reason therefor. Any party may serve and file an opposition within 10 days after the notice is mailed or within such time as the court specifies. Any other party may file a response within 5 days after the filing of an opposition.

(4) In determining whether to unseal a record, the court must consider the matters addressed in rule 243.1(c)–(e).

(5) The order unsealing a record must state whether the record is unsealed entirely or in part. If the court's order unseals only part of the record or unseals the record only as to certain persons, the order must specify the particular records that are unsealed, the particular persons who may have access to the record, or both. If, in addition to the records in the envelope or container, the court has previously ordered the sealing order, the register of actions, or any other court records relating to the case to be sealed, the unsealing order must state whether these additional records are unsealed.

(Subd (h) amended effective January 1, 2004.)

Rule 243.2 amended effective January 1, 2004; adopted effective January 1, 2001.

Rule 313. Memorandum of points and authorities

(a) [~~Notice of~~ Memorandum in support of motion ~~and~~ or demurrer—~~memorandum of points and authorities~~] A party filing a demurrer or ~~a notice of~~ motion, except for ~~a new trial~~ a motion listed in rule 314, ~~shall~~ must serve and file therewith a memorandum of points and authorities ~~to be relied on~~ in support. The court may construe the absence of ~~the~~ a memorandum ~~may be construed by the court~~ as an admission that the motion or special demurrer is not meritorious and cause for its denial and, in the case of a demurrer, as a waiver of all grounds not supported.

(Subd (a) amended effective January 1, 2004; adopted effective January 1, 1984.)

(b) [Contents of memorandum] ~~A~~ The memorandum ~~of points and authorities shall~~ must contain a statement of facts, a concise statement of the law, evidence and arguments relied on, and a discussion of the statutes, cases, and textbooks cited in support of the position advanced.

(Subd (b) amended effective January 1, 2004; adopted effective January 1, 1984.)

(c) [Case citation format] A case citation ~~shall~~ must include the official report volume and page number and year of decision. No other citations ~~shall~~ may be required.

(Subd (c) amended effective January 1, 2004; previously amended effective July 1, 1984 and January 1, 1992.)

(d) [Length of memorandum~~; requirements for lengthy memorandum~~]

Except in a summary judgment or summary adjudication motion, no opening or responding memorandum ~~of points and authorities shall~~ may exceed 15 pages. In a summary judgment or summary adjudication motion, no opening or responding memorandum ~~of points and authorities shall~~ may exceed 20 pages. No reply or closing memorandum ~~of points and authorities shall~~ may exceed 10 pages. The page limit ~~shall not take into account~~ does not include exhibits, declarations, attachments, ~~a~~ the table of contents, ~~a~~ the table of authorities, or the proof of service.

(Subd (d) amended effective January 1, 2004; adopted as part of a longer subd (d); previously amended effective July 1, 1984 and January 1, 1992.)

(e) [Application to file longer memorandum] A party may apply to the court ex parte but with written notice of the application to the other parties, at least 24 hours before the memorandum is due, for permission to file a longer memorandum. The application ~~shall~~ must state reasons why the argument cannot be made within the stated limit. A memorandum ~~of points and authorities~~ that exceeds 10 pages ~~shall~~ must include a table of contents and a table of authorities. A memorandum ~~of points and authorities~~ that exceeds 15 pages ~~shall~~ must also include an opening summary of argument. A memorandum that exceeds the page limits of these rules ~~shall~~ must be filed and considered in the same manner as a late-filed paper.

(Subd (e) amended and relettered effective January 1, 2004; adopted as part of subd (d).)

~~(e)~~(f) [Pagination of memorandum] Notwithstanding any other rule, the pagination of a memorandum ~~of points and authorities~~ that includes a table of contents and a table of authorities ~~shall be~~ is governed by this rule. In the case of such a memorandum, the caption page or pages ~~shall~~ must not be numbered; the pages of the tables ~~shall~~ must be numbered consecutively using lower-case Roman numerals starting on the first page of the tables; and the pages of the text ~~shall~~ must be numbered consecutively using Arabic numerals starting on the first page of the text.

(Subd (f) amended and relettered effective January 1, 2004; adopted as subd (e) effective July 1, 2000.)

~~(f)~~(g) [Use of *California Style Manual*] The style used in a memorandum ~~of points and authorities shall~~ must be that ~~set forth~~ stated in the *California Style Manual*~~,~~ or ~~that set forth in the most recent edition of the~~ *The Bluebook: Uniform System of Citation*, at the option of the party filing the

document. The same style ~~shall~~ must be used consistently throughout the memorandum.

(Subd (g) amended and relettered effective January 1, 2004; relettered as part of subd (f) effective July 1, 2000; previously amended effective July 1, 1997; adopted effective January 1, 1992, as part of subd (e).)

(h) **[Copies of non-California authorities]** If any authority other than California cases, statutes, constitutional provisions, or state or local rules is cited, a copy of the authority ~~shall~~ must be ~~attached to~~ lodged with the papers ~~in which the~~ that cite the authorit~~ies~~y ~~are cited~~ and tabbed as exhibits as required by rule 311(e). If a California case is cited before the time it is published in the advance sheets of the Official Reports, a copy of that case ~~shall~~ must also be ~~attached~~ lodged and ~~be~~ tabbed as required by rule 311(e).

(Subd (h) amended and relettered effective January 1, 2004; adopted as part of subd (e) effective January 1, 1992; previously amended effective July 1, 1997; previously relettered as part of subd (f) effective July 1, 2000.)

~~(g)~~(i) **[Attachments]** To the extent practicable, all supporting memoranda~~a~~ums ~~of points and authorities~~, declarations, and affidavits ~~shall~~ must be attached to the notice of motion.

(Subd (i) amended and relettered effective January 1, 2004; adopted as subd (f) effective July 1, 1997; previously relettered as subd (g) effective July 1, 2000.)

~~(h)~~(j) **[Exhibit references]** All references to exhibits or declarations in supporting or opposing papers ~~shall~~ must reference the number or letter of the exhibit, the specific page, and, if applicable, the paragraph or line number.

(Subd (j) amended and relettered effective January 1, 2004; adopted as subd (g) effective July 1, 1997; previously relettered as subd (h) effective July 1, 2000.)

~~(i)~~(k) **[Requests for judicial notice]** Any request for judicial notice ~~shall~~ must be made in a separate document listing the specific items for which notice is requested and ~~shall~~ must comply with rule 323(c).

(Subd (k) amended and relettered effective January 1, 2004; adopted as subd (h) effective July 1, 1997; relettered as subd (i) effective July 1, 2000; previously amended effective January 1, 2003.)

~~(j)~~(l) **[Proposed orders or judgments]** If a proposed order or judgment is submitted, it ~~shall~~ must be lodged and served with the moving papers but ~~shall~~ must not be attached to them.

(Subd (l) amended and relettered effective January 1, 2004; adopted as subd (i) effective July 1, 1997; previously relettered as subd (j) effective July 1, 2000.)

Rule 313 amended effective January 1, 2004; previously amended effective July 1, 1984, January 1, 1992, July 1, 1997, July 1, 2000, and January 1, 2003.

Rule 314. Applications, motions, and petitions not requiring a supporting memorandum

(a) **[Memorandum not required]** Civil motions, applications, and petitions filed on Judicial Council forms that do not require a supporting memorandum include the following:

(1) Application for appointment of guardian ad litem in a civil case;

(2) Application for an order extending time to serve pleading;

(3) Motion to be relieved as counsel;

(4) Motion filed in small claims case;

(5) Petition for change of name or gender;

(6) Petition for declaration of emancipation of minor;

(7) Petition for injunction prohibiting harassment;

(8) Petition for protective order to prevent elder or dependent adult abuse;

(9) Petition of employer for injunction prohibiting workplace violence;

(10) Petition for order prohibiting abuse (transitional housing);

(11) Petition to approve compromise of claim of a minor or an incompetent person; and

(12) Petition for withdrawal of funds from blocked account.

(b) **[Submission of a memorandum]** Notwithstanding (a), if it would further the interests of justice, a party may submit, or the court may order the submission of, a memorandum in support of any motion, application, or petition. The memorandum must comply with rule 313.

Rule 314 adopted effective January 1, 2004.

Rule 375. Motions ~~concerning trial dates~~ or application for continuance of trial

~~**(a) [Motions and grounds for continuances]** Continuances before or during trial in civil cases are disfavored. The date set for trial shall be firm. Unless the case has previously been assigned for all purposes to a specific judge or department, a motion for continuance before trial shall be made to the judge supervising the master calendar, or if there is no master calendar, to the judge in whose department the case is pending. If the case has been assigned for all purposes to a specific judge or department, the motion shall be made before the assigned judge or in the assigned department. Except for good cause, the motion shall be made on written notice to all other parties. The notice shall be given and motion made promptly on the necessity for the continuance being ascertained. A continuance before or during trial shall not be granted except on an affirmative showing of good cause under the standards recommended in section 9 of the Standards of Judicial Administration. This rule shall not prevent cases not subject to the Trial Court Delay Reduction Act from being removed from the civil active list as provided in rule 223.~~

(a) [Trial dates are firm] To ensure the prompt disposition of civil cases, the dates assigned for a trial are firm. All parties and their counsel must regard the date set for trial as certain.

(Subd (a) repealed and adopted effective January 1, 2004; amended effective January 1, 1995.)

~~**(b) [Motions to advance or reset]** Unless the case has previously been assigned for all purposes to a specific judge or department, motions to advance, reset, or specially set cases for trial shall be made before the presiding judge or the presiding judge's designee. If the case has been assigned for all purposes to a specific judge or department, the motion shall be made before the assigned judge or in the assigned department. A motion to advance, reset, or specially set a case for trial shall not be granted, except on notice, the filing of a declaration showing good cause, and the appearance by the moving party at the hearing on the motion.~~

(b) [Motion or application] A party seeking a continuance of the date set for trial, whether contested or uncontested or stipulated to by the parties, must make the request for a continuance by a noticed motion or an ex parte application under rule 379, with supporting declarations. The party must make the motion or application as soon as reasonably practical once the necessity for the continuance is discovered.

(Subd (b) repealed and adopted effective January 1, 2004; amended effective January 1, 1995.)

(c) [Grounds for continuance] Although continuances of trials are disfavored, each request for a continuance must be considered on its own merits. The court may grant a continuance only upon an affirmative showing of good cause requiring the continuance. Circumstances that may indicate good cause include:

(1) The unavailability of an essential lay or expert witness because of death, illness, or other excusable circumstances;

(2) The unavailability of a party because of death, illness, or other excusable circumstances;

(3) The unavailability of trial counsel because of death, illness, or other excusable circumstances;

(4) The substitution of trial counsel, but only where there is an affirmative showing that the substitution is required in the interests of justice;

(5) The addition of a new party if:

(A) the new party has not had a reasonable opportunity to conduct discovery and prepare for trial, or

(B) the other parties have not had a reasonable opportunity to conduct discovery and prepare for trial in regard to the new party's involvement in the case;

(6) A party's excused inability to obtain essential testimony, documents, or other material evidence despite diligent efforts; or

(7) A significant, unanticipated change in the status of the case as a result of which the case is not ready for trial.

(Subd (c) adopted effective January 1, 2004.)

(d) [Other factors to be considered] In ruling on a motion or application for continuance, the court must consider all the facts and circumstances that are relevant to the determination. These may include:

(1) The proximity of the trial date;

(2) Whether there was any previous continuance, extension of time, or delay of trial due to any party;

(3) The length of the continuance requested;

(4) The availability of alternative means to address the problem that gave rise to the motion or application for a continuance;

(5) The prejudice that parties or witnesses will suffer as a result of the continuance;

(6) If the case is entitled to a preferential trial setting, the reasons for that status and whether the need for a continuance outweighs the need to avoid delay;

(7) The court's calendar and the impact of granting a continuance on other pending trials;

(8) Whether trial counsel is engaged in another trial;

(9) Whether all parties have stipulated to a continuance;

(10) Whether the interests of justice are best served by a continuance, by the trial of the matter, or by imposing conditions on the continuance; and

(11) Any other fact or circumstance relevant to the fair determination of the motion or application.

(Subd (d) adopted effective January 1, 2004.)

Rule 375 amended effective January 1, 2004; adopted effective January 1, 1984; previously amended effective January 1, 1985, and January 1, 1995.

Rule 375.1. Motion or application to advance, specially set, or reset trial date

(a) **[Noticed motion or application required]** A party seeking to advance, specially set, or reset a case for trial must make this request by noticed motion or ex parte application under rule 379.

(b) **[Grounds for motion or application]** The request may be granted only upon an affirmative showing by the moving party of good cause based on a declaration served and filed with the motion or application.

Rule 375.1 adopted effective January 1, 2004.

Rule 982.9. Computer-generated or typewritten forms for proof of service ~~forms~~ of summons and complaint

(a) [Computer-generated or typewritten forms; conditions] Notwithstanding the adoption of mandatory form ~~982(a)(23), a~~ Proof of ~~Service~~ of ~~(~~Summons~~),~~ (form POS-010), a form for proof of service of a summons and complaint prepared entirely by ~~typewriter,~~ word processor, ~~printer,~~ typewriter, or similar process may be used for proof of service in any applicable action or proceeding if the following conditions are met:

(1) Rule~~s~~ 201 ~~and 501 shall~~ be ~~observed~~ applies except as otherwise provided in this rule, but numbered lines ~~shall~~ are not ~~be~~ required.

(2) The left, right, and bottom margins of the proof of service ~~shall~~ must be at least one-half inch. The top margin ~~shall~~ must be at least three-quarters of an inch. The typeface ~~shall~~ must be Times, Courier, or an equivalent roman typeface not smaller than 12 points. Text ~~shall~~ must be single-spaced, and a blank line ~~shall~~ must precede each main numbered item.

(3) The title and all the text of form ~~982(a)(23)~~ POS-010 that is not accompanied by a checkbox ~~shall~~ must be copied word for word except for instructions, which must not be copied. All the relevant text that is optional (that is, accompanied by a checkbox) ~~shall~~ must be copied word for word except that the checkboxes ~~shall~~ must not be copied.

(4) The Judicial Council number of the *Proof of Service ~~(Summons)~~ of Summons* ~~shall~~ must be typed as follows either in the left margin of the first page opposite the last line of text or at the bottom of each page: "Judicial Council form ~~982(a)(23)~~ POS-010."

~~(4)~~(5) The text of form ~~982(a)(23)~~ POS-010 ~~shall~~ must be copied in the same order as it appears on the printed form using the same item numbers. A declaration of diligence may be attached to the proof of service or inserted as item ~~3b(5)~~ 5b(5).

(6) Areas marked "For Court Use" ~~shall~~ must be copied in the same general locations and occupy approximately the same amount of space as on the printed form.

~~(5)~~(7) The telephone number of the attorney or party ~~shall~~ must appear flush with the left margin ~~after the address of~~ and below the attorney's or party's address ~~on the same line with any reference or file number~~.

~~(6)~~(8) The name of the court ~~shall~~ must be flush with the left margin. The address of the court ~~shall~~ is not ~~be~~ required.

~~(7) The instructions found on the printed form shall not be copied.~~

~~(8)~~(9) Material that would have been typed onto the printed form ~~shall~~ must be typed with each line indented three inches from the left margin. ~~This requirement shall not apply to items 1 and 5 of the form.~~

~~(9) The material in item 5 of the form may be arranged in two columns.~~

(Subd (a) amended effective January 1, 2004; previously amended effective July 1, 1985, January 1, 1986, January 1, 1987, and July 1, 1999.)

(b) [Compliance with rule] The act of filing a computer-generated or typewritten form under this rule constitutes a certification by ~~a~~ the party or attorney filing the form that ~~the form~~ it complies with this rule and is a true and correct copy of the form to the extent required by this rule.

(Subd (b) amended effective January 1, 2004; previously amended effective July 1, 1985, January 1, 1987, January 1, 1988, and July 1, 1999; relettered effective January 1, 1986.)

Rule 982.9 amended effective January 1, 2004; previously amended January 1, 1989 and July 1, 1999.

Rule 4.103. Notice to appear forms

(a) [Traffic offenses] A notice to appear that is issued for any violation of the Vehicle Code other than a felony or for a violation of an ordinance of a city or county relating to traffic offenses must be prepared and filed with the court on form TR-115, *Automated Traffic Enforcement System Notice to Appear*, or form TR-130, *Traffic/Nontraffic Notice to Appear*, and must comply with the requirements in the current version of the Judicial Council's instructions, *Notice to Appear and Related Forms*.

(b) [Nontraffic offenses] A notice to appear issued for a nontraffic infraction or misdemeanor offense that is prepared on form TR-120, *Nontraffic Notice to Appear*, or form TR-130, *Traffic/Nontraffic Notice to Appear*, and that complies with the requirements in the current version of the Judicial Council's instructions, *Notice to Appear and Related Forms*, may

be filed with the court and serve as a complaint as provided in Penal Code section 853.9.

(c) [Corrections] Corrections to citations previously issued on form TR-106, *Continuation of Notice to Appear*; form TR-108, *Continuation of Citation*; form TR-115, *Automated Traffic Enforcement System Notice to Appear*; form TR-120, *Nontraffic Notice to Appear*; or form TR-130, *Traffic/Nontraffic Notice to Appear*, must be made on a form TR-100, *Notice of Correction and Proof of Service*.

Rule 4.103 adopted effective January 1, 2004.

Rule 4.117. Qualifications for appointed trial counsel in capital cases

(a)–(h) ***

(i) [Order appointing counsel] When the court appoints counsel to a capital case, the court must complete Judicial Council form CR-190 *(Order Appointing Counsel in Capital Case)*, and counsel must complete Judicial Council form CR-191 *(Declaration of Counsel Seeking Appointment in Capital Case)*.

(Subd (i) adopted effective January 1, 2004.)

Rule 4.117 amended effective January 1, 2004; adopted effective January 1, 2003.

Rule 4.551. Habeas corpus proceedings

(a) [Petition; form and court ruling]

(1)–(2) ***

(3) (A) Upon filing, the clerk of the court must immediately deliver the petition to the presiding judge or his or her designee. The court must rule on a petition for writ of habeas corpus within ~~30~~ 60 days after the petition is filed. ~~If the court fails to rule on the petition for writ of habeas corpus within 30 days of its filing, an order to show cause will be deemed to have issued under subdivision (c).~~

(B) If the court fails to rule on the petition within 60 days of its filing, the petitioner may file a notice and request for ruling.

(i) The petitioner's notice and request for ruling must include a declaration stating the date the petition was filed and the date of the notice and request for ruling, and indicating that the petitioner has not received a ruling on the petition. A copy of the original petition must be attached to the notice and request for ruling.

(ii) If the presiding judge or his or her designee determines that the notice is complete and the court has failed to rule, the presiding judge, or his or her designee, must assign the petition to a judge and calendar the matter for a decision without appearances within 30 days of the filing of the notice and request for ruling. If the judge assigned by the presiding judge rules on the petition prior to the date the petition is calendared for decision, the matter may be taken off calendar.

(4)–(5) ***

(Subd (a) amended effective January 1, 2004; adopted effective January 1, 1982; previously amended effective January 1, 2002.)

(b)–(c) ***

(d) [Return] If an order to show cause is issued as provided in subdivision (c), ~~or if the court fails to rule on the petition in a timely manner as required in subdivision (a)(3),~~ the respondent may, within 30 days thereafter, file a return. Any material allegation of the petition not controverted by the return is deemed admitted for purposes of the proceeding. The return must comply with Penal Code section 1480 and must be served on the petitioner.

(Subd (d) amended effective January 1, 2004; repealed and adopted effective January 1, 2002.)

(e)–(h) ***

Rule 4.551 amended effective January 1, 2004; adopted as rule 260 effective January 1, 1982; renumbered as rule 4.500 effective January 1, 2001; previously amended and renumbered effective January 1, 2002.

Advisory Committee Comment (2004)

The court must appoint counsel upon the issuance of an order to show cause. (*In re Clark* (1993) 5 Cal.4th 750, 780 and *People vs. Shipman* (1965) 62 Cal.2d 226, 231–232.) The Court of Appeal has held that under Penal Code section 987.2, counties bear the expense of appointed counsel in a habeas corpus proceeding challenging the underlining conviction. (*Charlton vs. Superior Court*

(1979) 93 Cal.App.3d 858, 862.) Penal Code section 987.2 authorizes appointment of the public defender, or private counsel if there is no public defender available, for indigents in criminal proceedings.

Rule 5.118. Application for court order

(a)–(e) ***

(f) The court may grant or deny the relief solely on the basis of the application and responses and any accompanying memorandum of points and authorities.

(Subd (f) adopted effective January 1, 2004.)

Rule 5.118 amended effective January 1, 2004; adopted as rule 1225 effective January 1, 1970; previously amended effective January 1, 1972, July 1, 1977, January 1, 1980; and January 1, 1999; amended and renumbered effective January 1, 2003.

Rule 5.120. Appearance

(a) A respondent or defendant appears in a proceeding when he or she files:

(1) A response or answer, except as provided in section 418.10 of the Code of Civil Procedure;

(2) *******

~~(3) A notice of motion to quash the proceeding based on:~~

~~(A) Petitioner's lack of legal capacity to sue,~~

~~(B) Prior judgment or another action pending between the same parties for the same cause,~~

~~(C) Failure to meet the residence requirement of Family Code section 2320, or~~

~~(D) Statute of limitations in Family Code section 2211;~~

~~(4)~~(3) *******

~~(5)~~(4) *******

(Subd (a) amended effective January 1, 2004; previously amended and lettered effective January 1, 2003.)

(b)–(c) ***

Rule 5.120 amended effective January 1, 2004; adopted as rule 1236 effective January 1, 1970; previously amended effective January 1, 1972, and January 1, 1999; amended and renumbered effective January 1, 2003.

Rule. 5.121 Motion to quash proceeding or responsive relief

(a) Within the time permitted to file a response, the respondent may move to quash the proceeding, in whole or in part, for any of the following:

(1) Lack of legal capacity to sue;

(2) Prior judgment or another action pending between the same parties for the same cause;

(3) Failure to meet the residence requirement of Family Code section 2320; or

(4) Statute of limitations in Family Code section 2211.

(b) The hearing for any notice of motion to quash must be scheduled not more than 20 days from the date the notice is filed. If the respondent files a notice of motion to quash, no default may be entered and the time to file a response will be extended until 15 days after service of the court's order.

(c) Within 15 days after the filing of the response, the petitioner may move to quash, in whole or in part, any request for affirmative relief in the response for the grounds set forth in (a).

(d) The parties are deemed to have waived the grounds set forth in (a) if they do not file a motion to quash within the time frame set forth.

(e) When a motion to quash is granted, the court may grant leave to amend the petition or response and set a date for filing the amended pleadings. The court may also dismiss the action without leave to amend. The action may also be dismissed if the motion has been sustained with leave to amend and the amendment is not made within the time permitted by the court.

Rule 5.121 adopted effective January 1, 2004.

Rule ~~5.170~~ 5.70. Nondisclosure of attorney assistance in preparation of court documents

(a)–(c) ***

Rule 5.70 renumbered effective January 1, 2004; adopted as rule 5.170 effective July 1, 2003.

Rule ~~5.171~~ 5.71. Application to be relieved as counsel upon completion of limited scope representation

(a)–(f) ***

Rule 5.71 renumbered effective January 1, 2004; adopted as rule 5.171 effective July 1, 2003.

Rule 5.220. Court-ordered child custody evaluations

(a)–(f) ***

(g) [Requirements for evaluator qualifications, training, continuing education, and experience] All child custody evaluators must meet the qualifications, training, and continuing education requirements specified in Family Code sections 1815, 1816, and 3111, and rules ~~5.425~~ 5.225 and ~~5.430~~ 5.230.

(Subd (g) amended effective January 1, 2004; previously amended effective July 1, 1999, and January 1, 2003.)

(h)–(i) ***

Rule 5.220 amended effective January 1, 2004; adopted as rule 1257.3 effective January 1, 1999; previously amended effective July 1, 1999, and July 1, 2003; amended and renumbered effective January 1, 2003.

Rule 5.230. Domestic violence training standards for court-appointed child custody investigators and evaluators

(a)–(c) ***

(d) [Mandatory training] Persons appointed as child custody investigators under Family Code section 3110 or Evidence Code section 730, and

persons who are professional staff or trainees in a child custody or visitation evaluation or investigation, must complete basic training in domestic violence issues as described in Family Code section 1816 and in addition:

(1~~)~~) ~~(~~(*Advanced training*) Sixteen hours of advanced training must be completed within a 12-month period. These 16 hours must include:

(A) Twelve hours of instruction~~s~~, as approved by the Administrative Director of the Courts, in:

(i)–(v) *******

(B) *******

(2) *******

(Subd (d) amended effective January 1, 2004; previously amended effective January 1, 2002, and January 1, 2003.)

(e) ***

(f) [Certificate of course completion] Domestic violence training providers must distribute a certificate of completion to each person who has attended the initial 12-hour ~~in-person classroom~~ instruction and to each person who has attended the annual 4-hour update training in domestic violence for child custody evaluators. The certificate of completion must document (or state) the number of hours of training offered, the number of hours the person attended, the date(s) of the training, and the name of the training provider.

(Subd (f) amended effective January 1, 2004; previously amended effective January 1, 2003.)

(g) [Local court rules] Each local court may adopt rules regarding the procedures by which child custody evaluators who have completed the training in domestic violence as mandated by this rule will notify the local court. In the absence of such a local rule of court, child custody evaluators must attach copies of their certificates of completion of the initial 12 hours of advanced ~~in-person classroom~~ instruction and of the most recent annual 4-hour update training in domestic violence to each child custody evaluation report.

(Subd (g) amended effective January 1, 2004; previously amended effective January 1, 2003.)

(h) ***

Rule 5.230 amended effective January 1, 2004; adopted as rule 1257.7 effective January 1, 1999; previously amended effective January 1, 2002; amended and renumbered effective January 1, 2003.

Rule 5.311. Implementation of new and revised governmental forms by local child support agencies

(a) [General extended implementation] A local child support agency providing services as required by Family Code section 17400 must implement any new or revised form approved or adopted by the Judicial Council for support actions under Title IV-D of the Social Security Act, and under California statutory provisions concerning these actions, within six months of the effective date of the form. During that six-month period, the local child support agency may properly use and file the immediately prior version of the form.

(b) [Judgment regarding parental obligations] When the local child support agency files a proposed judgment or proposed supplemental judgment in any action using form FL-630, *Judgment Regarding Parental Obligations (Governmental)*, a final judgment or supplemental judgment may be filed on:

(1) The same version of the form that was used with the initial action or that was filed as an amended proposed judgment; or

(2) The most current version of the form, unless there have been amendments to the form that result in substantial changes from the filed version. If the most current version of the form has been substantially changed from the filed version, then the filed version must be used for the final judgment. A substantial change is one that would change the relief granted in a final judgment from that noticed in a proposed or amended proposed judgment.

Rule 5.311 adopted effective January 1, 2004.

Rule 1405.5. Court-connected dependency mediation

(a) [Purpose] This rule establishes mandatory standards of practice and administration for court-connected dependency mediation services in accordance with Welfare and Institutions Code section 350. This rule is intended to ensure fairness, accountability, and a high quality of service to

children and families and to improve the safety, confidentiality, and consistency of dependency mediation programs statewide.

(b) [Definitions]

(1) "Dependency mediation" is a confidential process conducted by specially trained, neutral third-party mediators who have no decision-making power. Dependency mediation provides a nonadversarial setting in which a mediator assists the parties in reaching a fully informed and mutually acceptable resolution that focuses on the child's safety and best interest and the safety of all family members. Dependency mediation is concerned with any and all issues related to child protection.

(2) "Safety and best interest of the child" refers to the child's physical, psychological, and emotional well-being. Determining the safety and best interest of the child includes consideration of all of the following:

(A) The preservation and strengthening of the family and family relationships whenever appropriate and possible;

(B) The manner in which the child may be protected from the risk of future abuse or neglect;

(C) The child's need for safety, stability, and permanency; and

(D) The ongoing need of the child to cope with the issues that caused his or her involvement in the juvenile dependency system.

(3) "Safety of family members" refers to the physical, psychological, and emotional well-being of all family members, with consideration of the following:

(A) The role of domestic violence in creating a perceived or actual threat for the victim, and

(B) The ongoing need of family members to feel safe from physical, emotional, and psychological abuse.

(4) "Differential domestic violence assessment" is a process used to assess the nature of any domestic violence issues in the family so that the mediator may conduct the mediation in such a way as to protect any victim of domestic violence from intimidation and to correct for power imbalances created by past violence and the fear of prospective violence.

(5) "Protocols" refer to any local set of rules, policies, and procedures developed and implemented by juvenile dependency mediation programs. All protocols must be developed in accordance with pertinent state laws, California Rules of Court, and local court rules.

(c) [Responsibility for mediation services]

(1) Each court that has a dependency mediation program must ensure that:

(A) Dependency mediators are impartial, are competent, and uphold the standards established by this rule;

(B) Dependency mediators maintain an appropriate focus on issues related to the child's safety and best interest and the safety of all family members;

(C) Dependency mediators provide a forum for all interested persons to develop a plan focused on the best interest of the child, emphasizing family preservation and strengthening and the child's need for permanency;

(D) Dependency mediation services and case management procedures are consistent with applicable state law without compromising each party's right to due process and a timely resolution of the issues;

(E) Dependency mediation services demonstrate accountability by:

(i) Providing for the processing of complaints about a mediator's performance, and

(ii) Participating in any statewide and national data-collection efforts;

(F) The dependency mediation program uses an intake process that screens for and informs the mediator about any restraining orders, domestic violence, or safety-related issues affecting the child or any other party named in the proceedings;

(G) Whenever possible, dependency mediation is conducted in the shared language of the participants. When the participants speak different languages, interpreters, court-certified when possible, should be assigned to translate at the mediation session; and

(H) Dependency mediation services preserve, in accordance with pertinent law, party confidentiality, whether written or oral, by the:

(i) Storage and disposal of records and any personal information accumulated by the mediation program, and

(ii) Management of any new child abuse reports and related documents.

(2) Each dependency mediator must:

(A) Attempt to assist the mediation participants in reaching a settlement of the issues consistent with preserving the safety and best interest of the child, first and foremost, and the safety of all family members and participants.

(B) Discourage participants from blaming the victim and from denying or minimizing allegations of child abuse or violence against any family member.

(C) Be conscious of the values of preserving and strengthening the family as well as the child's need for permanency.

(D) Not make any recommendations or reports of any kind to the court, except for the terms of any agreement reached by the parties.

(E) Treat all mediation participants in a manner that preserves their dignity and self-respect.

(F) Promote a safe and balanced environment for all participants to express and advocate for their positions and interests.

(G) Identify and disclose potential grounds upon which a mediator's impartiality might reasonably be challenged through a procedure that allows for the selection of another mediator within a reasonable time. If a dependency mediation program has only one mediator and the parties are unable to resolve the conflict, the mediator must inform the court.

(H) Identify and immediately disclose to the participants any reasonable concern regarding the mediator's continuing capacity to be

impartial, so they can decide whether the mediator should withdraw or continue.

(I) Promote the participants' understanding of the status of the case in relation to the ongoing court process, what the case plan requires of them, and the terms of any agreement reached during the mediation.

(J) Conduct an appropriate review to evaluate the viability of any agreement reached, including the identification of any provision that depends on the action or behavior of any individual who did not participate in creating the agreement.

(d) [Mediation process] The dependency mediation process must be conducted in accordance with pertinent state laws, applicable rules of court, and local protocols. All local protocols must include the following:

(1) The process by which cases are sent to mediation, including:

(A) Who may request mediation;

(B) Who decides which cases are to be sent to mediation;

(C) Whether mediation is voluntary or mandatory;

(D) How mediation appointments are scheduled; and

(E) The consequences, if any, to a party who fails to participate in the mediation process.

(2) A policy on who participates in the mediation, according to the following guidelines:

(A) When at all possible, dependency mediation should include the direct and active participation of the parties, including but not limited to the child, the parents or legal guardian, a representative of the child protective agency, and, at some stage, their respective attorneys.

(B) The child has a right to participate in the dependency mediation process accompanied by his or her attorney. If the child makes an informed choice not to participate, then the child's attorney may participate. If the child is unable to make an informed choice, then the child's attorney may participate.

(C) Any attorney who has not participated in the mediation must have an opportunity to review and agree to any proposal before it is submitted to the court for approval.

(D) As appropriate, other family members, and any guardian ad litem, Court Appointed Special Advocate (CASA), or other involved person or professional may participate in the mediation.

(E) A mediation participant who has been a victim of violence allegedly perpetrated by another mediation participant has the right to be accompanied by a support person. Unless otherwise invited or ordered to participate under the protocols developed by the court, a support person may not actively participate in the mediation except to be present as a source of emotional support for the alleged victim.

(3) A method by which the mediator may review relevant case information before the mediation.

(4) A protocol for providing mediation in cases in which domestic violence or violence perpetrated by any other mediation participant has, or allegedly has, occurred. This protocol must include specialized procedures designed to protect victims of domestic violence from intimidation by perpetrators. The protocol must also appropriately address all family violence issues by encouraging the incorporation of appropriate safety and treatment interventions in any settlement. The protocol must require:

(A) A review of case-related information before commencing the mediation;

(B) The performance of a differential domestic violence assessment to determine the nature of the violence, for the purposes of:

(i) Assessing the ability of the victim to fully and safely participate and to reach a noncoerced settlement;

(ii) Clarifying the history and dynamics of the domestic violence issue in order to determine the most appropriate manner in which the mediation can proceed; and

(iii) Assisting the parties, attorneys, and other participants in formulating an agreement following a discussion of appropriate safeguards for the safety of the child and family members.

(C) A mediation structure designed to meet the need of the victim of violence for safety and for full and noncoerced participation in the process, which structure must include:

(i) An option for the victim to attend the mediation session without the alleged perpetrator being present; and

(ii) Permission for the victim to have a support person present during the mediation process, whether he or she elects to be seen separately from or together with the alleged perpetrator.

(5) An oral or written orientation that facilitates participants' safe, productive, and informed participation and decision making by educating them about:

(A) The mediation process, the typical participants, the range of disputes that may be discussed, and the typical outcomes of mediation;

(B) The importance of keeping confidential all communications, negotiations, or settlement discussions by and between the participants in the course of mediation;

(C) The mediator's role and any limitations on the confidentiality of the process; and

(D) The right of a participant who has been a victim of violence allegedly perpetrated by another mediation participant to be accompanied by a support person and to have sessions with the mediators separate from the alleged perpetrator.

(6) Protocols related to the inclusion of children in the mediation, including a requirement that the mediator explain in an age appropriate way the mediation process to a participating child. The following information must be explained to the child:

(A) The options available to the child for his or her participation in the mediation;

(B) What occurs during the mediation process;

(C) The role of the mediator;

(D) What the child may realistically expect from the mediation, and the limits on his or her ability to affect the outcome;

(E) Any limitations on the confidentiality of the process;

(F) The child's absolute right to be accompanied, throughout the mediation, by his or her attorney and other support persons; and

(G) The child's ability to take a break or terminate the mediation session if his or her emotional or physical well-being is threatened.

(7) Policies and procedures for scheduling follow-up mediation sessions.

(8) A procedure for suspending or terminating the process if the mediator determines that mediation cannot be conducted in a safe or an appropriately balanced manner or if any party is unable to participate in an informed manner for any reason, including fear or intimidation.

(9) A procedure for ensuring that each participant clearly understands any agreement reached during the mediation, and a procedure for presenting the agreement to the court for its approval. This procedure must include the requirement that all parties and the attorneys who participate in the agreement review and approve it and indicate their agreement in writing before its submission to the court.

(e) [Education, experience, and training requirements for dependency mediators] Dependency mediators must meet the following minimum qualifications:

(1) Possession of one of the following:

(A) A master's or doctoral degree in psychology, social work, marriage and family therapy, conflict resolution, or another behavioral science substantially related to family relationships, family violence, child development, or conflict resolution from an accredited college or university; or

(B) A Juris Doctor or bachelor of laws degree with demonstrated experience in the field of juvenile or family law.

(2) At least two years of experience as an attorney, a referee, a judicial officer, or a mediator in juvenile dependency court or domestic relations court, or at least three years of experience in mediation, counseling, psychotherapy, or any combination thereof, preferably in a setting related to juvenile dependency or domestic relations; and

(3) Completion of at least 40 hours of initial dependency mediation training prior to or within 12 months of beginning practice as a dependency mediator. Currently practicing dependency mediators must complete the required 40 hours of initial training by January 1, 2006; at least 20 hours of this training must be completed by January 1, 2005. No training completed before January 1, 2002 may be used to satisfy these requirements. The training must cover the following subject areas:

(A) The dynamics of physical and sexual abuse, exploitation, emotional abuse, endangerment, and neglect of children, and their impacts on children;

(B) Child development and its relevance to the needs of children, to child abuse and neglect, and to child custody and visitation arrangements;

(C) The dynamics of domestic and family violence, its relevance to child abuse and neglect, and its effects on children and adult victims;

(D) Substance abuse and its impact on children;

(E) The roles and participation of parents, other family members, children, attorneys, guardians ad litem, the child welfare agency staff, Court Appointed Special Advocates (CASAs), law enforcement, mediators, the court, and other involved professionals and interested participants in the mediation process;

(F) Juvenile dependency and child welfare systems, including dependency law;

(G) The dynamics of disclosure and recantation and of denial of child abuse and neglect;

(H) Adult and child psychopathology;

(I) The psychology of families, the dynamics of family systems, and the impacts of separation, divorce, and family conflict on children;

(J) Safety and treatment issues related to child abuse, neglect, and family violence;

(K) Available community resources for dealing with domestic and family violence; substance abuse; and housing, educational, medical, and mental health needs in addition to related services for families in the juvenile dependency system, such as regional centers;

(L) The impact that the mediation process can have on children's well-being and behavior, and when and how to involve children in mediation;

(M) Methods to assist parties in developing options for different parenting arrangements that consider the needs of the children and each parent's capacity to parent;

(N) Awareness of differing cultural values, including the dynamics of cross-generational cultural issues and local demographics;

(O) The Americans With Disabilities Act, its requirements, and strategies for handling situations involving disability issues or special needs;

(P) The effect on family dynamics of removal or nonremoval of children from their homes and family members, including the related implications for the mediation process;

(Q) The effect of poverty on family dynamics and parenting; and

(R) An overview of the special needs of dependent children, including their educational, medical, and psychosocial needs, and the resources available to meet those needs.

(f) [Substitution for education or experience] The court, on a case-by- case basis, may approve substitution of experience for the education, or education for the experience, required by subdivisions (e)(1) and (e)(2).

(g) [Continuing education requirements for mediators] In addition to the 40 hours of training required by subdivision (e)(3), all dependency mediators, mediation supervisors, program coordinators and directors, volunteers, interns, and paraprofessionals must participate in at least 12 hours per year of continuing instruction designed to enhance dependency mediation practice,

skills, and techniques, including at least 4 hours specifically related to the issue of family violence.

(h) [Volunteers, interns, or paraprofessionals] Dependency mediation programs may use volunteers, interns, or paraprofessionals as mediators, but only if they are supervised by a professional mediator who is qualified to act as a professional dependency mediator as described in subdivision (e). They must meet the training and continuing education requirements in subdivisions (e)(3) and (g) unless they co-mediate with another professional who meets the requirements of this rule. They are exempt from meeting the education and experience requirements in subdivisions (e)(1) and (e)(2).

(i) [Standards of conduct] Mediators must:

(1) Meet the standards of the applicable code of ethics for court employees.

(2) Maintain objectivity, provide information to and gather information from all parties, and be aware of and control their own biases.

(3) Protect the confidentiality of all parties, including the child. Mediators must not release information or make any recommendations about the case to the court or to any individual except as required by statute (for example, the requirement to make mandatory child abuse reports or reports to authorities regarding threats of harm or violence). Any limitations to confidentiality must be clearly explained to all mediation participants before any substantive issues are discussed in the mediation session.

(4) Maintain the confidential relationship between any family member or the child and his or her treating counselor, including the confidentiality of any psychological evaluations.

(5) Decline to provide legal advice.

(6) Consider the health, safety, welfare, and best interest of the child and the safety of all parties and other participants in all phases of the process, and encourage the formulation of settlements that preserve these values.

(7) Operate within the limits of their training and experience, and disclose any limitations or bias that would affect their ability to conduct the mediation.

(8) Not require the child to state a preference for placement.

(9) Disclose to the court, to any participant and to the participant's attorney any conflicts of interest or dual relationships, and not accept any referral except by court order or the parties' stipulation. In the event of a conflict of interest, the mediator must suspend mediation and meet and confer in an effort to resolve the conflict of interest either to the satisfaction of all parties or according to local court rules. The court may order mediation to continue with another mediator or offer the parties an alternative method of resolving the issues in dispute.

(10) Not knowingly assist the parties in reaching an agreement that would be unenforceable for a reason such as fraud, duress, illegality, overreaching, absence of bargaining ability, or unconscionability.

(11) Protect the integrity of the mediation process by terminating the mediation when a party or participant has no genuine interest in resolving the dispute and is abusing the process.

(12) Terminate any session in which an issue of coercion, inability to participate, lack of intention to resolve the issues at hand, or physical or emotional abuse during the mediation session is involved.

Rule 1405.5 adopted effective January 1, 2004.

Rule 1425. Transfer-out hearing

(a) [Determination of residence—special rule on intercounty transfers (§§ 375, 750)]

(1) For purposes of rules 1425 and 1426, the residence of the child ~~shall be~~ is the residence of the person who has the legal right to physical custody of the child according to a prior court order, including:

~~(1)~~(A) A juvenile court order under ~~§~~ section 361.2; and

~~(2)~~(B) An order appointing a guardian of the person of the child.

(2) If there is no order determining custody, ~~custody shall be with~~ both parents are deemed to have physical custody.

(3) The juvenile court may make a finding of paternity under rule 1412. If there is no finding of paternity, ~~custody shall be with~~ the mother is deemed to have physical custody.

(4) Residence of a ward may be with the person with whom the child resides with approval of the court.

(Subd (a) amended effective January 1, 2004.)

(b) [Verification of residence] The residence of the person entitled to physical custody may be verified by ~~the~~ that person in court or by declaration ~~by~~ of a probation officer in the transferring or receiving county.

(Subd (b) amended effective January 1, 2004.)

(c) [Transfer to county of child's residence (§§ 375, 750)]

(1) After making its jurisdictional finding, the court may order the case transferred to the juvenile court of the county of the child's residence ~~of the child~~ if:

~~(1)~~(A) The petition was filed in a county other than that of the child's residence; ~~of the child,~~ or

~~(2)~~(B) The child's residence ~~of the child~~ was changed to another county after the petition was filed.

(2) If the court decides to transfer ~~the~~ a delinquency case, the court ~~shall~~ must order the transfer before beginning the ~~602~~ disposition hearing without adjudging the child to be a ward.

(3) If the court decides to transfer a dependency case, the ~~The~~ court may order the transfer before or after the ~~300~~ disposition hearing.

(Subd (c) amended effective January 1, 2004.)

(d) [Transfer on subsequent change in child's residence (§§ 375, 750)] If, after the child has been placed under a program of supervision, the residence is changed to another county, the court may, upon an application for modification under rule 1432, transfer the case to the juvenile court of the other county.

(Subd (d) amended effective January 1, 2004.)

(e) [Conduct of hearing] After the court determines the identity and residence of the child's custodian, the court ~~shall~~ must consider whether transfer of the case would be in the child's best interests. The court ~~shall~~ may not transfer the case unless it determines that the transfer will protect or further the child's best interests.

(Subd (e) amended effective January 1, 2004; repealed and adopted effective January 1, 1990; previously amended effective January 1, 1993.)

(f) [Order of transfer (§§ 377, 752)] The order of transfer ~~shall~~ must be entered on Judicial Council form *Juvenile Court Transfer Orders* (JV-550), which ~~shall~~ must include all required information and findings.

(Subd (f) amended effective January 1, 2004; repealed and adopted effective January 1, 1990; previously amended effective January 1, 1993.)

(g) [Transport of child and transmittal of documents (§§ 377, 752)]

(1) If the child is ordered transported to the receiving county in custody, the child ~~shall~~ must be delivered to the receiving county within seven court days, and the clerk of the court of the transferring county ~~shall~~ must prepare ~~all papers contained in the files~~ a certified copy of the complete case file so that ~~they~~ it may be transported with the child to the court of the receiving county.

(2) If the child is not ordered transported in custody, the clerk of the transferring court ~~shall~~ must transmit to the clerk of the court of the receiving county within 10 court days ~~all papers contained in the files~~ a certified copy of the complete case file.

(3) ~~Certified copies shall be~~ A certified copy of the complete case file is deemed an original~~s~~.

(Subd (g) amended effective January 1, 2004; repealed and adopted effective January 1, 1990; previously amended effective January 1, 1992, January 1, 1993, and July 1, 1999.)

(h) [Appeal of transfer order (§§ 379, 754)] The order of transfer may be appealed by the transferring or receiving county and notice of appeal ~~shall~~ must be filed in the transferring county~~,~~ under rule 39. Notwithstanding the filing of a notice of appeal, the receiving county ~~shall~~ must assume jurisdiction of the case on receipt and filing of the order of transfer.

(Subd (h) amended effective January 1, 2004; repealed and adopted effective January 1, 1990; previously amended effective January 1, 1992.)

Rule 1425 amended effective January 1, 2004; adopted effective January 1, 1990; previously amended effective January 1, 1992, January 1, 1993, and July 1, 1999.

Rule 1426. Transfer-in hearing

(a) [Procedure on transfer (§§ 378, 753)]

(1) On receipt and filing of ~~an order of transfer~~ a certified copy of a transfer order, the receiving court ~~shall~~ must take jurisdiction of the case. The receiving court may not reject the case. The clerk of the receiving court ~~shall~~ must immediately place the transferred case on the court calendar for a transfer-in hearing by the court:

~~(1)~~(A) Within two court days after the transfer-out order and documents are received if the child has been transported in custody and remains detained; or

~~(2)~~(B) Within 10 court days after the transfer-out order and documents are received if the child is not detained in custody.

(2) ~~Requests~~ No requests for additional time for the transfer-in hearing ~~shall be denied~~ may be approved. The clerk ~~shall~~ must immediately cause notice to be given to the child and the parent or guardian, orally or in writing, of the time and place of the transfer-in hearing. The receiving court must notify the transferring court upon receipt and filing of the certified copies of the transfer order and complete case file.

(Subd (a) amended effective January 1, 2004; repealed and adopted effective January 1, 1990; previously amended January 1, 1992, and July 1, 1999.)

(b) [Conduct of hearing] At the transfer-in hearing, the court ~~shall~~ must:

(1) Advise the child and the parent or guardian of the purpose and scope of the hearing;

(2) Provide for the appointment of counsel if appropriate; and

(3) If the child was transferred to the county in custody, determine whether the child shall be further detained ~~pursuant to~~ under rule 1440 or 1470.

(Subd (b) amended effective January 1, 2004.)

(c) [Subsequent proceedings] The proceedings in the receiving court ~~shall~~ must commence at the same phase as when the case was transferred. The court may continue the hearing for an investigation and report to a date not to exceed 10 court days if the child is in custody or 15 court days if the child is not detained in custody.

(Subd (c) amended effective January 1, 2004; previously amended effective July 1, 1999.)

(d) [Limitation on more restrictive custody (§§ 387, 777)] If a disposition order has already been made in the transferring county, a more restrictive level of physical custody ~~shall~~ may not be ordered in the receiving county except after a hearing upon a supplemental petition under rule 1431.

(Subd (d) amended effective January 1, 2004.)

(e) [Setting six-month review (§ 366)] When an order of transfer is received and filed relating to a child who has been declared a dependent, the court ~~shall~~ must set a date for a six-month review within six months of the disposition or the most recent review hearing.

(Subd (e) amended effective January 1, 2004.)

(f) [Change of circumstances or additional facts] If the receiving court believes that a change of circumstances or additional facts indicate~~s~~ that the child does not reside in the receiving county, a transfer-out hearing ~~shall~~ must be held under rules 1425 and 1432. The court may direct the department of social services or the probation department to seek a modification of orders under section 388 or 778 and under rule 1432.

(Subd (f) amended effective January 1, 2004; adopted effective January 1, 1992; previously amended effective July 1, 1999.)

Rule 1426 amended effective January 1, 2004; adopted effective January 1, 1990; previously amended effective January 1, 1992 and July 1, 1999.

Rule 1429.5. Restraining orders

(a) ***

(b) [Application (§§ 213.5, 304)] Application for restraining orders may be made orally at any scheduled hearing regarding the child who is the subject of a petition under section 300, 601, or 602, or may be made by written application,

or may be made on the court's own motion. The written application must be submitted on~~:~~ Judicial Council form *Application and ~~Declaration~~ Affidavit for Restraining Order* (JV-245).

~~(1) Judicial Council forms *Juvenile Dependency Petition* (JV-100) and *Application and Declaration for Restraining Order* (JV-245); or~~

~~(2) Judicial Council forms *Juvenile Wardship Petition* (JV-600) and *Application and Declaration for Restraining Order* (JV-245).~~

(Subd (b) amended effective January 1, 2004; previously amended effective January 1, 2003.)

(c)–(f) ***

(g) [Order to show cause and reissuance (§ 213.5(c))] When a temporary restraining order is granted without notice, the matter must be made returnable on an order to show cause why the order should not be granted, no later than 15 days or, on a showing of good cause, 20 days from the date the temporary restraining order is granted.

(1) On the motion of the person seeking the restraining order or on its own motion, the court may shorten the time for service of the order to show cause on the person to be restrained ~~of the order to show cause~~.

(2) ~~When a temporary restraining order is granted without notice, and service on the restrained person has not been accomplished, or when the hearing must be continued for some other reason, the court may reissue the temporary restraining order pursuant to the procedures in section 527 of the Code of Civil Procedure.~~ The court may, on its own motion or the filing of an affidavit by the person seeking the restraining order, find that the person to be restrained could not be served within the time required by law and reissue an order previously issued and dissolved by the court for failure to serve the person to be restrained. The reissued order must state on its face the date of expiration of the order. Judicial Council form *Application and Order for Reissuance of Order to Show Cause* (FL-306/JV-251) must be used for this purpose.

(Subd (g) amended effective January 1, 2004; adopted effective January 1, 2003.)

(h)–(*l*) ***

Rule 1429.5 amended effective January 1, 2004; adopted effective January 1, 2000; previously amended effective January 1, 2003.

Rule 1423. Confidentiality of records (§§ 827, 828)

(a) ***

(b) [Inspection] Only those persons specified in sections 827 and 828 may inspect juvenile court records without authorization from the court. Counsel who are entitled to inspect juvenile court records include any trial court or appellate attorney representing a party in the juvenile court proceeding. Juvenile court records may not be obtained or inspected by civil or criminal subpoena. Authorization for any other person to inspect, obtain, or copy juvenile court records must be ordered by the juvenile court presiding judge or a judicial officer designated by the juvenile court presiding judge.

In determining whether to authorize inspection or release of juvenile court records, in whole or in part, the court ~~shall~~ must balance the interests of the child and other parties to the juvenile court proceedings, the interests of the petitioner, and the interests of the public. The court ~~shall~~ must permit disclosure of, discovery of, or access to juvenile court records or proceedings only insofar as is necessary, and only if there is a reasonable likelihood that the records in question will disclose information or evidence of substantial relevance to the pending litigation, investigation, or prosecution. The court may issue protective orders to accompany authorized disclosure, discovery, or access.

(Subd (b) amended effective January 1, 2004.)

(c)–(i) ***

Rule 1423 amended effective January 1, 2004; adopted effective July 1, 1992; previously amended effective January 1, 1994, July 1, 1995, July 1, 1997, and January 1, 2001.

Rule 1456. Orders of the court

(a)–(b) ***

(c) [Limitations on parental control (§§ 245.5, 361, 362; Gov. Code, § 7579.5)]

(1)–(2) *******

(3) ~~The court must consider the educational needs of the child and, if~~

~~appropriate, proceed under Education Code section 56156 and Government Code section 7579.5.~~ The court must consider whether it is necessary to limit the right of the parent or guardian to make educational decisions for the child. If the court limits this right, it must appoint a responsible adult as the educational representative under rule 1499 to make educational decisions for the child. Any limitation on the right of a parent or guardian to make educational decisions for the child must be specified in the court order.

(Subd (c) amended effective January 1, 2004; adopted as subd (b) effective January 1, 1991; relettered effective July 1, 1995; previously amended effective July 1, 2002.)

(d)–(j) ***

Rule 1456 amended effective January 1, 2004; adopted effective January 1, 1991; previously amended effective January 1, 1993, July 1, 1993, January 1, 1994, January 1, 1995, July 1, 1995, January 1, 1996, January 1, 1997, July 1, 1997, January 1, 1999, July 1, 1999, January 1, 2001, July 1, 2001, and July 1, 2002.

Rule 1460. Six-month review hearing

(a)–(d) ***

(e) [Determinations—burden of proof (§§ 366, 366.1, 366.21, 364)]

(1)–(4) *******

(5) The court must consider whether it is necessary to limit the right of the parent or guardian to make educational decisions for the child. If the court limits this right, it must appoint a responsible adult as the educational representative under rule 1499 to make educational decisions for the child.

(Subd (e) amended effective January 1, 2004; repealed and adopted as subd (d) effective January 1, 1990; relettered effective January 1, 1992; previously amended effective January 1, 1999, July 1, 1999, January 1, 2001, and July 1, 2002.)

(f) [Conduct of hearing (§ 366.21)] If the court does not return custody of the child,

(1)–(3) *******

(4) A judgment, order, or decree setting a hearing under section 366.26 may

be reviewed on appeal following the order of the 366.26 hearing only if the following have occurred:

(A)–(B) ***

~~Review on appeal of the order setting a hearing under section 366.26 is limited to issues raised in a previous petition for extraordinary writ that were supported by an adequate record.~~

(5) Review on appeal of the order setting a hearing under section 366.26 is limited to issues raised in a previous petition for extraordinary writ that were supported by an adequate record.

(6) ***

(7) When the court orders a hearing under section 366.26, the court must advise ~~orally~~ all parties ~~present, and by first class mail for parties not present,~~ that, ~~if the party wishes~~ to preserve any right to review on appeal of the order setting the hearing ~~under section 366.26~~, ~~the~~ a party must seek an extraordinary writ by filing:

(A) ~~a *Notice of Intent to File Writ Petition and Request for Record* form (JV-820) or other~~ A notice of the party's intent to file a writ petition and a request for the record, which may be submitted on form JV-820, *Notice of Intent to File Writ Petition and Request for Record, Rule 39.1B;* and

(B) ~~a *Writ Petition—Juvenile* form (JV-825) or other~~ A petition for an extraordinary writ, which may be submitted on form JV-825, *Petition for Extraordinary Writ (Juvenile Dependency)*.

(8) Within 24 hours of the review hearing, the clerk of the court must provide notice by first-class mail ~~must be provided by the clerk of the court~~ to the last known address of any party who is not present when the court orders the hearing under section 366.26. This notice must include the advice required by subdivision (f)(7) of this rule.

(9) Copies of Judicial Council form ~~*Writ Petition—Juvenile*~~ *Petition for Extraordinary Writ (Juvenile Dependency)* (JV-825) and Judicial Council form *Notice of Intent to File Writ Petition and Request for Record, Rule 39.1B* (JV-820) must be available in the courtroom~~,~~ and must accompany all mailed notices of the advice.

~~(8)~~(10) ***

(Subd (f) amended effective January 1, 2004; repealed and adopted as subdivision (e) effective January 1, 1990; previously amended and relettered effective January 1, 1992; previously amended effective January 1, 1993, January 1, 1995, July 1, 1997, January 1, 1999, July 1, 1999, January 1, 2000, January 1, 2001, and July 1, 2002.)

(g)–(i) ***

Rule 1460 amended effective January 1, 2004; adopted effective January 1, 1990; previously amended effective January 1, 1992, January 1, 1993, January 1, 1995, July 1, 1995, July 1, 1997, January 1, 1999, July 1, 1999, January 1, 2000, January 1, 2001, and July 1, 2002.

Rule 1461. Twelve-month review hearing

(a) [Requirement for 12-month review; setting of hearing; notice (§ 366.21)] The case of any dependent child whom the court has removed from the custody of the parent or guardian ~~shall~~ must be set for review hearing within 12 months ~~after~~ of the date the child entered foster care, as defined in rule 1401, and no later than 18 months from the date of the initial removal. Notice of the hearing ~~shall~~ must be given as provided in rule 1460.

(Subd (a) amended effective January 1, 2004; previously amended effective January 1, 2001.)

(b) [Reports (§ 366.21)] Before the hearing the petitioner ~~shall~~ must prepare a report describing services offered to the family and progress made. The report ~~shall~~ must include:

(1)–(2) ***

(Subd (b) amended effective January 1, 2004; adopted as subd (c) effective January 1, 2000 relettered effective January 1, 2001.)

(c) [Conduct of hearing] At the hearing, the court ~~shall~~ must state on the record that the court has read and considered the report of petitioner, the report of any Court~~-~~ Appointed ~~child~~ Special Advocate (CASA), and other evidence, and ~~shall~~ must proceed as follows:

(1) If the child has been removed from the custody of the parent or guardian, the court ~~shall~~ must order the child returned to the parent or guardian unless the court finds the petitioner has established, by a preponderance of the evidence, that return would create a substantial risk of detriment to the child. Failure of the parent or guardian to regularly participate and

make substantive progress in a court-ordered treatment program ~~shall be~~ is prima facie evidence that return would be detrimental.

(2) ***

(3) If the court does not order return of the child, the court ~~shall~~ must specify the factual basis for its finding of risk of detriment to the child. The court ~~shall~~ must order a permanent plan unless the court determines that there is a substantial probability of return within 18 months of the removal of the child. In order to find a substantial probability of return within the 18-month period, the court must find all of the following:

(A)–(C) ***

(4) If the child is not returned to the custody of the parent~~s~~ or guardian~~s~~, the court ~~shall~~ must consider whether reasonable services have been provided or offered. The court ~~shall~~ must find that:

(A)–(B) ***

(5) ***

(6) The court must consider whether it is necessary to limit the right of the parent or guardian to make educational decisions for the child. If the court limits this right, it must appoint a responsible adult as the educational representative under rule 1499 to make educational decisions for the child.

(Subd (c) amended effective January 1, 2004; repealed and adopted effective January 1, 1990, as subd (c)(2); previously amended effective January 1, 1992, January 1, 1993, January 1, 1995, July 1, 1995, July 1, 1997, and January 1, 1999; relettered and amended effective July 1, 1999, as subd (c), January 1, 2002, as subd (d), and January 1, 2001 as subd (c).

(d) [Determinations and orders] The court ~~shall~~ must proceed as follows:

(1)–(2) ***

(3) Order a hearing under section 366.26 within 120 days, if the court finds there is no substantial probability of return within 18 months of the ~~original detention order~~ date of initial removal~~,~~ and finds by clear and convincing evidence that reasonable services have been provided to the parent or guardian.

(4) If the court orders a hearing under section 366.26, termination of reunification services ~~shall~~ must also be ordered. Visitation ~~shall~~ may continue unless the court finds it would be detrimental to the child.

(5) If the court orders a hearing under section 366.26, the court ~~shall~~ must direct that an assessment be prepared as stated in section 366.21(i).

(6) A judgment, order, or decree setting a hearing under section 366.26 is not an immediately appealable order. Review ~~shall~~ may be sought only by filing Judicial Council form ~~*Writ Petition—Juvenile*~~ *Petition for Extraordinary Writ (Juvenile Dependency)* (JV-825) or other petition for extraordinary writ. If a party wishes to preserve any right to review on appeal of the findings and orders made under this rule, the party ~~is required to~~ must seek an extraordinary writ under rules 39.1B and 1436.5.

(7) A judgment, order, or decree setting a hearing under section 366.26 may be reviewed on appeal following the order of the 366.26 hearing only if the following have occurred:

(A) An extraordinary writ was sought by the timely filing of Judicial Council form ~~*Writ Petition—Juvenile*~~ *Petition for Extraordinary Writ (Juvenile Dependency)* (JV-825) or other petition for extraordinary writ; and

(B) The petition for extraordinary writ was summarily denied or otherwise not decided on the merits.

(8) Review on appeal of the order setting a hearing under section 366.26 is limited to issues raised in a previous petition for extraordinary writ that were supported by an adequate record.

~~(8)~~(9) Failure to file a petition for extraordinary writ review within the period specified by rules 39.1B and 1436.5, to substantively address the issues challenged, or to support the challenge by an adequate record, ~~shall~~ precludes subsequent review on appeal of the findings and orders made under this rule.

~~(9)~~(10) When the court orders a hearing under section 366.26, the court ~~shall~~ must advise ~~orally~~ all parties ~~present, and by first class mail for parties not present,~~ that, ~~if the party wishes~~ to preserve any right to review on appeal of the order setting the hearing ~~under section 366.26~~, ~~the~~ a party ~~is required to~~ must seek an extraordinary writ by filing:

(A) ~~a *Notice of Intent to File Writ Petition and Request for Record* form (JV-820) or other~~ A notice of intent to file a writ petition and a request for the record, which may be submitted on form JV-820, *Notice of Intent to File Writ Petition and Request for Record, Rule 39.1B;* and

(B) ~~a *Writ Petition—Juvenile* form (JV-825) or other~~ A petition for an extraordinary writ, which may be submitted on form JV-825, *Petition for Extraordinary Writ (Juvenile Dependency)*.

(11) Within 24 hours of the review hearing, the clerk of the court must provide notice by first-class mail ~~shall be provided by the clerk of the court~~ to the last known address of any party who is not present when the court orders the hearing under section 366.26. This notice must include the advice required by subdivision (d)(10) of this rule.

(12) Copies of Judicial Council form ~~*Writ Petition—Juvenile*~~ *Petition for Extraordinary Writ (Juvenile Dependency)* (JV-825) and Judicial Council form *Notice of Intent to File Writ Petition and Request for Record, Rule 39.1B* (JV-820) ~~shall~~ must be available in the courtroom, and ~~shall~~ must accompany all mailed notices of the advice.

~~(10)~~(13) If the court orders a hearing under section 366.26, the court ~~shall~~ must order that no notice of the hearing under section 366.26 be provided to any of the following:

(A)–(B) ***

(Subd (d) amended effective January 1, 2004; repealed and adopted effective January 1, 1990, as subd (c)(3); previously amended effective January 1, 1992, January 1, 1993, January 1, 1995, July 1, 1995, July 1, 1997, and January 1, 1999; relettered and amended effective July 1, 1999, as subd (d), January 1, 2000, as subd (e), January 1, 2001 as subd (d).

(e) [Setting a hearing under section 366.26] At the 12-month review hearing, the court ~~shall~~ may not set a hearing under section 366.26 to consider termination of the rights of only one parent unless:

(1) That parent is the only surviving parent~~,~~; ~~or~~

(2) The rights of the other parent have been terminated by a California court of competent jurisdiction or by a court of competent jurisdiction of another state under the statutes of that state~~,~~; or

(3) The other parent has relinquished custody of the child to the county

welfare department.

(Subd (e) amended effective January 1, 2004; adopted as subd (d) effective July 1, 1997; relettered effective July 1, 1999, as subd (e), January 1, 2000, as subd (f), and January 1, 2001, as subd (e).

Rule 1461 amended effective January 1, 2004; adopted effective January 1, 1990; previously amended effective January 1, 1992, January 1, 1993, January 1, 1994, January 1, 1995, July 1, 1995, July 1, 1997, January 1, 1999, July 1, 1999, January 1, 2000, and January 1, 2001.

Rule 1464. Adoption

(a) [Procedures—Adoption]

(1) The petition for the adoption of a dependent child who has been freed for adoption may be filed in the juvenile court with jurisdiction over the dependency.

(2) All adoption petitions ~~shall~~ must be completed on Judicial Council form ~~*Petition for Adoption*~~ *Adoption Request* (ADOPT-200) and ~~shall~~ must be verified. In addition, the petitioner must complete ~~the~~ Judicial Council forms ~~*Petitioner Consent and Agreement to Adoption*~~ *Adoption Agreement* (ADOPT-210) and ~~*Order of Adoption*~~ *Adoption Order* (ADOPT-215).

(3) A petitioner seeking to adopt an Indian child ~~shall~~ must also complete Judicial Council form ~~*Attachment to Petition for Adoption—Adoption of an*~~ *Indian Child* (ADOPT-220). If applicable, ~~the~~ Judicial Council form ~~*Consent to Termination of Parental Rights and Certification—Adoption of an Indian Child*~~ *Parent of Indian Child Agrees to End Parental Rights* (ADOPT-225) may be filed.

(4) The clerk ~~shall~~ must open a confidential adoption file for each child and this file ~~shall~~ must be separate and apart from the dependency file, with an adoption case number different from the dependency case number.

(Subd (a) amended effective January 1, 2004; previously amended effective January 1, 1996 and January 1, 1999.)

(b) [Notice] The clerk of the court must give notice ~~Notice~~ of the adoption hearing ~~should be given~~ to:

(1) Any attorney of record for the child~~,~~;

(2) Any Court- Appointed ~~child~~ Special Advocate (CASA)~~,~~;

(3) The child welfare agency; ~~and~~

(4) The tribe of an Indian child; and

(5) The California Department of Social Services. The notice to the California Department of Social Services must include a copy of the completed *Adoption Request* (form ADOPT-200) and a copy of any adoptive placement agreement or agency joinder filed in the case. ~~The clerk shall notice the child welfare agency of the adoption hearing.~~

(Subd (b) amended effective January 1, 2004.)

(c) [Hearing] If the petition for adoption is filed in the juvenile court, the proceeding for adoption ~~shall~~ must be heard in juvenile court ~~once~~ after all appellate rights have been exhausted. Each petitioner ~~Petitioner~~ and the child must be present at the hearing. The hearing may be heard by a referee if the referee is acting as a temporary judge.

(Subd (c) amended effective January 1, 2004; previously amended effective January 1, 1999.)

(d) [Record] The record ~~shall~~ must reflect that the court has read and considered the assessment prepared for the hearing held under section 366.26 and as required by section 366.22(b), the report of any Court- Appointed ~~child~~ Special Advocate (CASA), and any other reports or documents admitted into evidence.

(Subd (d) amended effective January 1, 2004.)

(e) ***

(f) [Consent] At the hearing, each adoptive parent and the child, if 12 years of age or older, ~~shall~~ must execute Judicial Council form ~~*Petitioner Consent and Agreement to Adoption*~~ *Adoption Agreement* (ADOPT-210) in the presence of and with the acknowledgment of ~~acknowledged by~~ the court.

(Subd (f) amended effective January 1, 2004; previously amended effective January 1, 1999.)

(g) [Dismissal of jurisdiction] If the petition for adoption is granted, the juvenile court ~~shall~~ must dismiss the dependency, terminate jurisdiction over the child, and vacate any previously set review hearing dates. A completed Judicial

Council form *Termination of Dependency* (JV-364) ~~shall~~ must be filed in the child's juvenile dependency file.

(Subd (g) amended effective January 1, 2004; previously amended effective January 1, 1999.)

Rule 1464 amended effective January 1, 2004; adopted effective July 1, 1995; previously amended January 1, 1996 and January 1, 1999.

Rule 1493. Orders of the court

(a)–(c) ***

(d) [Removal of custody—orders regarding reunification services (§ 727.2)]

(1) Whenever the court orders the care, custody, and control of the child to be under the supervision of the probation officer for placement, the court must order the probation department to ensure the provision of reunification services to facilitate the safe return of the child to his or her home or the permanent placement of the ~~minor~~ child and to address the needs of the ~~minor~~ child while in foster care.

(2) ~~However,~~ Reunification services need not be provided to the parent or guardian if the court finds, by clear and convincing evidence, that one or more of the exceptions listed in section 727.2(b) ~~are~~ is true.

(Subd (d) amended effective January 1, 2004; adopted effective July 1, 2002.)

(e) [Wardship orders (§§ 726, 727, 727.1, 730, 731)] The court may make any reasonable order for the care, supervision, custody, conduct, maintenance, support, and medical treatment of a child declared a ward.

(1)–(4) *******

(5) ~~The court must consider the educational needs of the child and, if appropriate, proceed under Education Code section 56156 and Government Code section 7579.5. Any limitation on the right of a parent or guardian to make education decisions for the child must be specified in the court order.~~ The court must consider whether it is necessary to limit the right of the parent or guardian to make educational decisions for the child. If the court limits this right, it must appoint a responsible adult as the educational representative under rule 1499 to make educational decisions for the child.

(Subd (e) amended effective January 1, 2004; adopted as subd (d) effective January 1, 1991; amended and relettered effective July 1, 2002.)

(f)–(g) ***

Rule 1493 amended effective January 1, 2004; adopted effective January 1, 1991; previously amended effective January 1, 1998, and July 1, 2002.

Rule 1496. Reviews and permanency planning hearings

(a) [Six-month status review hearings (§§ 727.2, 11404.1)] A status review hearing must be conducted no less frequently than once every six months from the date the ward entered foster care, for any ward removed from the custody of his or her parent or guardian under section 726 and placed under section 727. The court may consider the hearing at which the initial order for placement is made as the first status review hearing.

(1)–(2) ***

(3) *(Findings and orders (§ 727.2(d))* The court must consider the safety of the ward and make findings and orders that determine the following:

(A)–(B) ***

(C) Whether it is necessary to limit the right of the parent or guardian to make educational decisions for the child. If the court limits this right, it must appoint a responsible adult as the educational representative under rule 1499 to make educational decisions for the child.

~~(C)~~(D) ***

~~(D)~~(E) ***

~~(E)~~(F) ***

(4) ***

(Subd (a) amended effective January 1, 2004; previously amended effective January 1, 1998, January 1, 2001, and January 1, 2003.)

(b)–(f) ***

Rule 1496 amended effective January 1, 2004; adopted effective January 1, 1991; previously amended effective January 1, 1998, January 1, 2001, and January 1, 2003.

Rule 1499. ~~Surrogate parent appointment~~ Appointment of responsible adult as educational representative

(a) [Parent's educational rights limited (§§ 361, 726)] The juvenile court may ~~make an appropriate order~~ specifically limit~~ing~~ a parent's or ~~a~~ guardian's right to make educational decisions for a child who is ~~the subject of a petition~~ adjudged a dependent or ward of the court under Welfare and Institutions Code section 300, 601, or 602, but the limitations ~~must~~ may not exceed those necessary to protect the child. The court must order ~~must be prepared~~ any limitation on form JV-535, *Order Limiting Parent's~~'~~ Right to Make Educational Decisions for the Child and ~~Recommendation for Surrogate Parent Appointment~~ Appointing Responsible Adult as Educational Representative~~—~~—Juvenile*.

(Subd (a) amended effective January 1, 2004.)

(b) [Appointment of responsible adult as educational representative (§§ 361, 726)] Whenever the court limits the right of a parent or guardian to make educational decisions for the child, the court must at the same time use form JV-535 to appoint a responsible adult as an educational representative to make educational decisions for the child until:

(1) The child reaches 18 years of age, unless the child then chooses not to make educational decisions or is deemed incompetent by the court;

(2) The court appoints another responsible adult to make educational decisions for the child under this rule;

(3) The court restores the right of the parent or guardian to make educational decisions for the child;

(4) The court appoints a successor guardian or conservator; or

(5) The child is placed in a planned permanent living arrangement under section 366.21(g)(3), 366.22, 366.26, 727.3(b)(5), or 727.3(b)(6) of the Welfare and Institutions Code, in which case the foster parent, relative caregiver, or nonrelative extended family member has the right to make

educational decisions for the child under section 56055(a) of the Education Code unless excluded by the court.

(Subd (b) adopted effective January 1, 2004.)

(c) [Limits on appointment (§§ 361, 726)]

(1) The court should consider appointing a responsible adult relative, nonrelative extended family member, foster parent, family friend, mentor, or Court Appointed Special Advocate (CASA) as the educational representative if one is available and willing to serve.

(2) The court may not appoint any individual as the educational representative if that person would have a conflict of interest as defined by section 361(a) or 726(b).

(Subd (c) adopted effective January 1, 2004.)

~~(b)~~(d) [Appointment of surrogate parent (Gov. Code, § 7579.5)]

(1) If the court has ~~ordered the specific limitation of~~ specifically limited a parent's or ~~a~~ guardian's right to make educational decisions for ~~the~~ a child~~,~~ but cannot identify a responsible adult to make educational decisions for the child and the child may be eligible for special education and related services or already has an individualized education program, the court must use form JV-535 to refer the child to the responsible local educational agency ~~must promptly appoint~~ for prompt appointment of a surrogate parent ~~as provided in~~ under Government Code section 7579.5.

(2) ~~Under Government Code section 7579.5(c), the local educational agency must select, as a first preference, a relative caretaker, foster parent, or Court Appointed Special Advocate (CASA) if any of these individuals is willing and able to serve as a surrogate parent.~~ If the court refers a child to the local educational agency for appointment of a surrogate parent, the court must order that form JV-536, *Local Educational Agency Response to JV-535—Appointment of Surrogate Parent,* be served by first-class mail on the local educational agency along with form JV-535.

~~(3) To assist the local educational agency in selecting a statutorily preferred surrogate, the court may recommend a surrogate who is willing and able to serve. This recommendation must be made in writing on form JV-535 and must be served on the local educational agency by first-class mail.~~

~~(4)~~(3) Whenever the local educational agency ~~has appointed or removed a surrogate parent under Government Code section 7579.5(g)~~ appoints a surrogate parent for a dependent or ward under Government Code section 7579.5(a)(1), it must notify the court on form JV-536 within 21 calendar days of the date of the appointment.

(4) Whenever the local educational agency terminates the appointment of a surrogate parent for a dependent or ward under Government Code section 7579.5(h) or replaces the surrogate parent for any other reason, it must notify the court on form JV-536 within 21 calendar days of the date of the termination or replacement.

(Subd (d) amended and relettered effective January 1, 2004; adopted as subd (b) effective July 1, 2002.)

~~**(c) [Local educational agency response]** The court must also serve the local educational agency by first-class mail with form JV-536, *Local Educational Agency Response to JV-535—Appointment of Surrogate Parent*. Form JV-536 must be completed by the local educational agency upon the appointment of a surrogate parent and returned to the court within 21 calendar days from the date of the appointment.~~

(Subd (c) repealed effective January 1, 2004.)

(e) [Unavailability of responsible adult (§§ 361, 726)] If the court cannot identify a responsible adult to make educational decisions for the child, the appointment of a surrogate parent is not legally warranted, and there is no foster parent to exercise the authority granted by section 56055 of the Education Code, the court may, with the input of any interested person, make educational decisions for the child.

(Subd (e) adopted effective January 1, 2004.)

Rule 1499 amended effective January 1, 2004; adopted effective July 1, 2002.

Rule 1580.3. ADR program administration

(a) [ADR program administrator] The presiding judge in each trial court ~~shall~~ must designate the clerk or executive officer, or another court employee who is knowledgeable about ADR processes to serve as ADR program administrator. The duties of the ADR program administrator ~~shall~~ must include:

~~(a)~~(1) Developing informational material concerning the court's ADR programs;

~~(b)~~(2) Educating attorneys and litigants about the court's ADR programs;

~~(c)~~(3) Supervising the development and maintenance of any panels of ADR neutrals maintained by the court; and

~~(d)~~(4) Gathering statistical and other evaluative information concerning the court's ADR programs.

(Subd (a) amended effective January 1, 2004.)
(Subd (b) relettered as part of subd (a) effective January 1, 2004.)
(Subd (c) relettered as part of subd (a) effective January 1, 2004.)
(Subd (d) relettered as part of subd (a) effective January 1, 2004.)

(b) [ADR committee]

(1) In each superior court that has 18 or more authorized judges, there must be an ADR committee. The members of the ADR committee must include, insofar as is practicable:

(A) The presiding judge or a judge designated by the presiding judge;

(B) One or more other judges designated by the presiding judge;

(C) The ADR program administrator;

(D) Two or more active members of the State Bar chosen by the presiding judge as representatives of those attorneys who regularly represent parties in general civil cases before the court; including an equal number of attorneys who represent plaintiffs and who represent defendants in these cases;

(E) One or more members of the court's panel of arbitrators chosen by the presiding judge; and

(F) If the court makes a list of any ADR neutrals other than arbitrators available to litigants, one or more neutrals chosen by the presiding judge from that list.

(2) The ADR committee may include additional members selected by the presiding judge.

(3) Any other court may by rule establish an ADR committee as provided in (b)(1). Otherwise, the presiding judge or a judge designated by the presiding judge must perform the functions and have the powers of an ADR committee as provided in these rules.

(4) ADR committee membership is for a two-year term. The members of the ADR committee may be reappointed and may be removed by the presiding judge.

(5) The ADR committee is responsible for overseeing the court's alternative dispute resolution programs for general civil cases, including those responsibilities relating to the court's judicial arbitration program specified in rule 1603(b).

(Subd (b) adopted effective January 1, 2004.)

Rule 1580.3 amended effective January 1, 2004; adopted effective January 1, 2001.

Rule ~~1600.1~~ 1600. Applicability of rules

The rules in this chapter (commencing with this rule ~~1600~~) apply if Code of Civil Procedure, part 3, title 3, chapter 2.5 (commencing with section 1141.10) is in effect.

Rule 1600 amended and renumbered effective January 1, 2004; adopted as rule 1600.1 effective January 1, 1988; previously amended effective July 1, 1999 and January 1, 2000.

Rule ~~1600~~ 1601. ~~Actions~~Cases subject to and exempt from arbitration

(a) [Cases subject to arbitration] Except as provided in ~~rule 1600.5~~ (b), the following ~~actions shall~~ cases must be arbitrated:

~~**(c)**~~ (1) In each superior court with 18 or more authorized judges, ~~or 10 or more authorized judges in a county in which there is at least one municipal court,~~ all unlimited civil ~~actions~~ cases where the amount in controversy does not exceed $50,000 as to any plaintiff~~.~~;

~~**(d)**~~ (2) In each superior court with fewer than 18 authorized judges~~, or fewer than 10 authorized judges in a county in which there is at least one municipal court~~ that so provides by local rule, all ~~actions~~ unlimited civil cases where the amount in controversy does not exceed $50,000 as to any plaintiff~~.~~;

~~**(e)**~~ (3) All limited civil cases in courts that so provide by local rule~~.~~;

~~**(a)**~~ (4) Upon stipulation, any ~~action~~ limited or unlimited civil case in any court, regardless of the amount in controversy~~.~~; and

~~**(b)**~~ (5) Upon filing of an election by ~~a~~ all plaintiffs, any ~~action~~ limited or unlimited civil case in any court in which ~~the~~ each plaintiff agrees that the arbitration award ~~shall~~ will not exceed $50,000 as to that plaintiff.

Subd (a) amended effective January 1, 2004.)
(Subd (b) amended and relettered as part of subd (a) effective January 1, 2004; previously; amended effective January 1, 1982, January 1, 1986, and January 1, 1988.)
(Subd (c) amended and relettered as part of subd (a) effective January 1, 2004; amended effective July 1, 1999.)
(Subd (d) amended and relettered as part of subd (a) effective January 1, 2004; amended effective July 1, 1999.)
(Subd (e) amended and relettered as part of subd (a) effective January 1, 2004; previously amended effective July 1, 1999.)

(b) [Cases exempt from arbitration] The following cases are exempt from arbitration:

(1) Cases that include a prayer for equitable relief that is not frivolous or insubstantial;

(2) Class actions;

(3) Small claims cases or trials de novo on appeal from the small claims court;

(4) Unlawful detainer proceedings;

(5) Family Law Act proceedings except as provided in Family Code section 2554;

(6) Any case otherwise subject to arbitration that is found by the court not to be amenable to arbitration on the ground that arbitration would not reduce the probable time and expense necessary to resolve the litigation;

(7) Any category of cases otherwise subject to arbitration but excluded by local rule as not amenable to arbitration on the ground that, under the circumstances relating to the particular court, arbitration of such cases would not reduce the probable time and expense necessary to resolve the litigation; and

(8) Cases involving multiple causes of action or a cross-complaint if the court determines that the amount in controversy as to any given cause of action or cross-complaint exceeds $50,000.

(Subd (b) adopted effective January 1, 2004.)

Rule 1601 amended and renumbered effective January 1, 2004; adopted as rule 1600 effective July 1, 1979; previously amended effective January 1, 1982, January 1, 1986, January 1, 1988, and July 1, 1999.

~~Rule 1600.5. Actions exempt from arbitration~~

~~The following actions are exempt from arbitration:~~

~~(a)~~ ~~Actions that include a prayer for equitable relief that is not frivolous or insubstantial;~~

~~(Subd (a) adopted effective July 1, 1979.)~~

~~(b)~~ ~~Class actions;~~

~~(Subd (b) adopted effective July 1, 1979.)~~

~~(c)~~ ~~Small claims actions or trials de novo on appeal from the small claims court;~~

~~(Subd (c) adopted effective July 1, 1979.)~~

~~(d)~~ ~~Unlawful detainer proceedings;~~

~~(Subd (d) adopted effective July 1, 1979.)~~

~~(e)~~ ~~Family Law Act proceedings;~~

~~(Subd (e) adopted effective July 1, 1979.)~~

~~(f)~~ ~~Any action otherwise subject to arbitration that is found by the court to be not amenable to arbitration on the ground that arbitration would not reduce the probable time and expense necessary to resolve the litigation;~~

~~(Subd (f) adopted effective July 1, 1979.)~~

~~(g)~~ ~~Any category of actions otherwise subject to arbitration but excluded by local rule as not amenable to arbitration on the ground that under the circumstances~~

~~relating to the particular court arbitration of such cases would not reduce the probable time and expense necessary to resolve the litigation;~~

~~*(Subd (g) adopted effective July 1, 1979.)*~~

~~**(h)** Actions involving multiple causes of action or a cross-complaint if the court determines that the amount in controversy as to any given cause of action or cross-complaint exceeds $50,000.~~

~~*(Subd (h) amended effective January 1, 1988; previously amended effective January 1, 1982, and January 1, 1986; adopted effective July 1, 1979.)*~~

~~**(i)** (Deleted 1988.)~~

~~*(Subd (i) deleted effective July 1, 1988; adopted effective July 1, 1979.)*~~

Rule 1600.5 repealed effective January 1, 2004; adopted effective July 1, 1979; previously amended effective January 1, 1982, January 1, 1986, January 1, 1988, and July 1, 1988. The repealed rule related to actions exempt from arbitration.

~~**Drafter's Notes**~~
~~**1985** See note following rule 1600.~~

Rule ~~1601~~ 1602. ~~Stipulations and requests for~~ Assignment to arbitration

(a) [Stipulations to arbitration] When the parties stipulate to arbitration, the ~~action~~ case must be set for arbitration forthwith. The stipulation must be filed no later than the time the initial case management statement is filed, unless the court orders otherwise.

(Subd (a) amended effective January 1, 2004; previously amended effective July 1, 1979, January 1, 1999, and January 1, 2003.)

(b) [~~Requests~~ Plaintiff election for arbitration] Upon written ~~request~~ election of ~~a~~ all plaintiffs to submit ~~an action~~ a case to arbitration, the ~~action~~ case must be set for arbitration forthwith, subject to a motion by defendant for good cause to delay the arbitration hearing. The ~~request~~ election must be filed no later than the time the initial case management statement is filed, unless the court orders otherwise.

(Subd (b) amended effective January 1, 2004; adopted effective July 1, 1979; previously amended effective January 1, 1982, January 1, 1986, January 1, 1988, and January 1, 2003.)

(c) [Cross-actions] ~~An action~~ A case involving a cross-complaint where ~~a~~ all plaintiffs ~~has~~ have elected to arbitrate must be removed from the list of cases assigned to arbitration if, upon motion of the cross-complainant made within 15 days after notice of the election to arbitrate, the court determines that the amount in controversy relating to the cross-complaint exceeds $50,000.

(Subd (c) amended effective January 1, 2004; adopted as part of subd (b) effective July 1, 1979; amended and lettered effective January 1, 2003.)

(d) [Case management conference] Absent a stipulation or ~~a~~ an ~~request~~ election by all plaintiffs to submit to arbitration, ~~actions~~ cases must be set for arbitration ~~at the initial case management conference or no later than 90 days before the date set for trial, whichever occurs first.~~ when the court determines that the amount in controversy does not exceed $50,000. The amount in controversy must be determined at the first case management conference or review under rule 212 that takes place after all named parties have appeared or defaulted.

(Subd (d) amended effective January 1, 2004; adopted as subd (c) effective July 1, 1976; previously amended effective July 1, 1979, and January 1, 1982; amended and relettered effective January 1, 2003. (Former subd (d) repealed effective January 1, 1985.)

Rule 1602 amended and renumbered effective January 1, 2004; adopted as rule 1601 effective; July 1, 1976; previously amended effective July 1, 1979, January 1, 1982, January 1, 1985, January 1, 1986, January 1, 1988, January 1, 1991, and January 1, 2003.

~~Rule 1602. Designation of arbitrator by stipulation~~

~~The parties may by stipulation designate any person to serve as arbitrator. The designation shall be effective if the designated person files a written consent and the oath required of panel arbitrators under these rules within 15 days of the date of stipulation. A stipulation may specify the maximum amount of the arbitrator's award.~~

Rule 1602 repealed effective January 1, 2004; adopted effective July 1, 1976; amended effective July 1, 1979. The repealed rule related to designation of arbitrator by stipulation.

Rule 1603. Arbitration program administration

(a) [Arbitration administrator] The presiding judge ~~shall~~ must designate the ~~clerk, executive officer or other court employee~~ ADR administrator selected

under rule 1580.3 to serve as arbitration administrator. The arbitration administrator ~~shall~~ must supervise the selection of arbitrators for the cases on the arbitration hearing list, generally supervise the operation of the arbitration program, and perform any additional duties delegated by the presiding judge.

(Subd (a) amended effective January 1, 2004.)

~~**(b)** In each superior court having 18 or more authorized judges, or 10 or more authorized judges in a county in which there is at least one municipal court, there shall be an administrative committee composed of, insofar as may be practicable:~~

~~(1) the presiding judge or a judge designated by the presiding judge;~~

~~(2) the arbitration administrator;~~

~~(3) two or more active members of the State Bar chosen by the presiding judge as representative of those attorneys who regularly represent plaintiffs in personal injury tort actions before the court;~~

~~(4) an equal number of active members of the State Bar chosen by the presiding judge as representative of those attorneys who regularly represent defendants in personal injury tort actions before the court.~~

~~(5) three or more active members of the State Bar chosen by the presiding judge as representative of attorneys who regularly try other civil cases.~~

~~It may also include:~~

~~(6) three or more active members of the State Bar chosen by the presiding judge as representative of attorneys who regularly try cases before the court in any specialized area for which the presiding judge establishes a specialized arbitration panel.~~

~~The members of the administrative committee shall serve for terms of two years; they may be reappointed, and may be removed by the presiding judge.~~

(Subd (b) repealed effective January 1, 2004; amended July 1, 1979, and July 1, 1999.

~~**(c)** Any other court may by rule establish an administrative committee as provided in subdivision (b). Otherwise, the presiding judge or a judge designated by the presiding judge shall perform the functions and have the powers of an administrative committee as provided in these rules.~~

(Subd (c) repealed effective January 1, 2004; amended effective July 1, 1979.)

~~(d)~~ (b) [Responsibilities of ADR committee] The ~~administrative~~ ADR committee established under rule 1580.3 ~~shall have power~~ is responsible for:

~~(1) to select its chairman and provide for its procedures;~~

~~(2)~~(1) ~~to appoint~~ Appointing the panels of arbitrators provided for in rule 1604;

~~(3)~~(2) ~~to remove~~ Removing a person from a panel of arbitrators;

~~(4)~~(3) ~~to establish~~ Establishing procedures for selecting an arbitrator not inconsistent with these rules or local court rules; and

~~(5)~~(4) ~~to review~~ Reviewing the administration and operation of the arbitration program periodically and make~~e~~ing recommendations to the Judicial Council as it deems appropriate to improve the program, promote the ends of justice, and serve the needs of the community.

(Subd (b) amended and relettered effective January 1, 2004; adopted as subd (d) effective July 1, 1976.)

Rule 1603 amended effective January 1, 2004; adopted effective July 1, 1976; previously amended July 1, 1979, and July 1, 1999.

Rule 1604. ~~Composition of the~~ Panels of arbitrators

(a) [Creation of panels] Every court must have a panel of arbitrators for personal injury cases, and such additional panels as the presiding judge may, from time to time, determine are needed.

(Subd (a) amended effective January 1, 2004; previously amended effective July 1, 1979, and July 1, 2001.)

(b) [Composition of panels] The panels of arbitrators must be composed of active or inactive members of the State Bar, retired court commissioners who were licensed to practice law prior to their appointment as a commissioner, and retired judges. A former California judicial officer is not eligible for the panel of arbitrators unless he or she is an active or inactive member of the State Bar.

~~Each person appointed serves as a member of a panel of arbitrators at the pleasure of the administrative committee. A person may be on arbitration panels in more than one county.~~

(Subd (b) amended effective January 1, 2004; previously amended effective July 1, 1979, January 1, 1996, and July 1, 2001.)

(c) **[Responsibilities of ADR committee]** The ~~administrative~~ ADR committee is responsible for determining the size and composition of each panel of arbitrators. The ~~number of attorneys on a~~ personal injury panel ~~who usually represent plaintiffs must~~, to the extent feasible, must contain an equal ~~the~~ number of those who usually represent plaintiffs and those who usually represent defendants.

(Subd (c) amended effective January 1, 2004; previously amended effective July 1, 2001.)

(d) **[Service on panel]** Each person appointed serves as a member of a panel of arbitrators at the pleasure of the ADR committee. A person may be on arbitration panels in more than one county. An appointment to a panel is effective when the person appointed:

(1)–(3) *** * ***

(Subd (d) amended effective January 1, 2004; previously amended effective January 1, 1996, and July 1, 2001.)

(e) **[Panel lists]** Lists showing the names of panel arbitrators available to hear cases must be available for public inspection in the ~~arbitration~~ ADR program administrator's office.

(Subd (e) amended effective January 1, 2004; previously amended effective July 1, 2001.)

Rule 1604 amended effective January 1, 2004; adopted effective July 1, 1976; previously amended effective July 1, 1979, January 1, 1996, and July 1, 2001.

Rule 1605. ~~Assignment of cases~~ Selection of the arbitrator

(a) **[Selection by stipulation]** By stipulation, the parties may select any person to serve as arbitrator. If the parties select a person who is not on the court's arbitration panel to serve as the arbitrator, the stipulation will be effective only if (1) the selected person completes a written consent to serve and the oath required of panel arbitrators under these rules and (2) both the consent and the

oath are attached to the stipulation. A stipulation may specify the maximum amount of the arbitrator's award. The stipulation to an arbitrator must be filed no later than 10 days after the case has been set for arbitration under rule 1602.

(Subd (a) adopted effective January 1, 2004.)

~~(a)~~(b) [Selection absent stipulation or local procedures] ~~Unless~~ If the arbitrator has not been ~~designated~~ selected by stipulation and the court has not adopted local rules or procedures for the selection of the arbitrator as permitted under (c), the arbitrator will be selected as follows:

(1) Within 15 days after a case is ~~placed on the~~ set for arbitration ~~hearing list~~ under rule 1602, ~~the administrator shall select at random at least three names from the appropriate panel in accordance with procedures established by the administrative committee. The procedures shall also provide a method by which each party or side may within 10 days reject in writing an equal number of names so that, if each party or side rejects the maximum number of names permitted, a single name will remain and that arbitrator will be deemed appointed. If at the end of 10 days two or more names have not been rejected, the administrator shall appoint at random one of the remaining arbitrators.~~

~~The local procedures shall assure that an arbitrator is appointed within 30 days from the submission of a case to arbitration pursuant to rule 1600(a), (d) or (e).~~

~~In the absence of local procedures to the contrary:~~

~~(1)~~ the administrator ~~shall~~ must determine the number of clearly adverse sides in the case; in the absence of a cross-complaint bringing in a new party, the administrator may assume there are two sides. A dispute as to the number or identity of sides ~~shall~~ must be decided by the presiding judge in the same manner as ~~are~~ disputes in determining sides entitled to peremptory challenges of jurors.

(2) The administrator ~~shall~~ must select at random a number of names equal to the number of sides, plus one.

(3) The list of randomly selected names ~~shall~~ must be mailed to counsel for the parties, and each side has 10 days from the date of mailing to file a rejection, in writing, of no more than one name on the list; if there are two or more parties on a side, they must join in the rejection of a single name.

(4) Promptly on the expiration of the 10-day period, the administrator ~~shall~~ must appoint, at random, one of the persons on the list whose name was not rejected, if more than one name remains.

(5) The administrator ~~shall~~ must assign the case to the arbitrator appointed and ~~shall~~ must give notice of the appointment to the arbitrator and to all parties. ~~Within 15 days after the appointment of the arbitrator, the arbitrator shall notify each party and the administrator in writing of the date, time, and place of the arbitration hearing.~~

(Subd (b) amended and relettered effective January 1, 2004; adopted as subd (a) effective July 1, 1976; previously amended effective July 1, 1979, January 1, 1982, and January 1, 1984.)

(c) [Local selection procedures] In lieu of the procedure in (b), a court that has an arbitration program may, by local rule or by procedures adopted by its ADR committee, establish any fair method of selecting an arbitrator that (1) affords each side an opportunity to challenge at least one listed arbitrator peremptorily and (2) ensures that an arbitrator is appointed within 30 days from the submission of a case to arbitration. The local rule or procedure may require that all steps leading to the selection of the arbitrator take place during or immediately following the case management conference or review under rule 212 at which the court determines the amount in controversy and the suitability of the case for arbitration.

(Subd (c) adopted effective January 1, 2004.)

~~(b)~~(d) [Procedure if first arbitrator declines to serve] If the first arbitrator selected declines to serve ~~or does not complete the hearing within 90 days after the date of the assignment of the case to him or her, including any time due to continuances granted under rule 1607~~, the administrator ~~shall~~ must vacate the appointment of the arbitrator and ~~shall~~ may either:

(1) Return the case to the top of the arbitration hearing list, restore the arbitrator's name to the list of those available for selection to hear cases, and appoint a new arbitrator ~~pursuant to subdivision (a). The 90-day period may be extended only by order of the court upon the motion of a party as provided in rule 1607(b).~~; or

(2) Certify the case to the court.

(Subd (d) amended and relettered effective January 1, 2004; adopted as subd (b) effective July 1, 1976; previously amended effective January 1, 1991, and January 1, 1994.)

~~(c)~~(e) [Procedure if second arbitrator declines to serve or hearing is not timely held] ~~When a case is returned under subdivision (b) to the arbitration hearing list after assignment to the first arbitrator, the administrator may certify the case to the court. When the case is returned after assignment to the~~ If the second arbitrator selected declines to serve or if the arbitrator does not complete the hearing within 90 days after the date of the assignment of the case to him or her, including any time due to continuances granted under rule 1608, ~~however,~~ the administrator ~~shall~~ must certify the case to the court.

(Subd (e) amended and relettered effective January 1, 2004; adopted as subd (c) effective July 1, 1976; previously amended January 1, 1991.)

(f) [Cases certified to court] If a case is certified to the court under either (d) or (e), the court ~~shall~~ must summon the parties or their counsel. If the inability to hold a hearing is due to the neglect or lack of cooperation of a party who elected or stipulated for arbitration, the case ~~shall~~ must be removed from the arbitration hearing list and restored to the civil active list~~;~~. In all other circumstances, cases may be ordered reassigned for arbitration, or the court may make any other appropriate order to expedite disposition of the case.

(Subd (f) amended and relettered effective January 1, 2004; adopted as part of subd (c) effective July 1, 1976.)

Rule 1605 amended effective January 1, 2004; adopted effective July 1, 1976; previously amended effective July 1, 1979, January 1, 1982; January 1, 1984, January 1, 1991, and January 1, 1994.

~~Rule 1605.5. Local procedures for selecting arbitrator~~

~~In lieu of the procedure in rule 1605, a court having an arbitration program may by local rule or by procedures adopted by its administrative committee pursuant to rule 1603(d)(4) establish any fair method of assigning a case to an arbitrator that affords each side an opportunity to challenge at least one listed arbitrator peremptorily. The local rule or procedure may require that all steps leading to the selection of the arbitrator take place during or immediately following the conference at which the court determines the amount in controversy and the suitability of the case for arbitration. The court may require that counsel with appropriate authority attend the conference.~~

~~A copy of the local rule or procedure adopted pursuant to this rule shall accompany the notice of the hearing to determine the amount in controversy.~~

Rule 1605.5 repealed effective January 1, 2004; adopted effective July 1, 1987.

~~**Drafter's Notes**~~

~~**1987**—The council adopted new rule 1605.5 to encourage local courts to establish local procedures to ensure that all steps in selecting an arbitrator take place at or immediately after the conference at which the court determines the amount in controversy and that the case is suitable for arbitration.~~

Rule 1606. Disqualification for conflict of interest

(a) **[Arbitrator's duty to disqualify himself or herself]** The arbitrator must determine whether any cause exists for disqualification upon any of the grounds set forth in section 170.1 of the Code of Civil Procedure governing the disqualification of judges. If any member of the arbitrator's law firm would be disqualified under subdivision (a)(4) of section 170.1, the arbitrator is disqualified. Unless the ground for disqualification is disclosed to the parties in writing and is expressly waived by all parties in writing, the arbitrator must promptly notify the administrator of any known ground for disqualification and another arbitrator must be selected as provided in rule 1605.

(Subd (a) amended effective January 1, 2004; previously amended effective July 1, 1979, July 1, 1990, and July 1, 2001.)

(b) **[Disclosures by arbitrator]** In addition to any other disclosure required by law, no later than five days prior to the deadline for parties to file a motion for disqualification of the arbitrator under Code of Civil Procedure section 170.6 or, if the arbitrator is not aware of his or her appointment or of a matter subject to disclosure at that time, as soon as practicable thereafter, an arbitrator must disclose to the parties:

(1)–(2) *** * ***

(Subd (b) amended effective January 1, 2004; adopted effective July 1, 2001.)

(c) **[Request for disqualification]** A copy of any request by a party for the disqualification of an arbitrator pursuant to section 170.1 or 170.6 of the Code of Civil Procedure must be sent to the administrator.

(Subd (c) amended effective January 1, 2004; adopted effective July 1, 1996, as subd (b); previously amended effective July 1, 1979, and July 1, 1990; amended and relettered effective July 1, 2001.)

(d) [Arbitrator's failure to disqualify himself or herself] Upon motion of any party, made as promptly as possible under sections 170.l and 1141.18(d) of the Code of Civil Procedure before the conclusion of arbitration proceedings, the appointment of an arbitrator to a case must be vacated if the court finds that: (1) the party has demanded that the arbitrator disqualify himself or herself (2) ~~and~~ the arbitrator has failed to do so; and (3) any of the grounds specified in section 170.1 exist~~s~~. The ~~arbitration~~ ADR administrator must return the case to the top of the arbitration hearing list and must appoint a new arbitrator. The disqualified arbitrator's name must be returned to the list of those available for selection to hear cases, unless the court orders that the circumstances of the disqualification be reviewed~~, under rules 1603(d)(3) and 1604(b),~~ by the ADR administrator, the ~~administrative~~ ADR committee, the presiding judge, or a judge designated by the presiding judge, for appropriate action.

(Subd (d) amended effective January 1, 2004; adopted effective January 1, 1994, as subd (c) amended and relettered effective July 1, 2001.)

Rule 1606 amended effective January 1, 2004; adopted effective July 1, 1976; previously amended effective July 1, 1979, July 1, 1990, January 1, 1994, and July 1, 2001.

Rule ~~1611~~ 1607. Hearings; notice; when and where held

(a) [Setting hearing; notice] Within 15 days after the appointment of the arbitrator, the arbitrator ~~shall~~ must set the time, date, and place of the arbitration hearing~~,~~ and notify each party and the administrator in writing of the time, date, and place set. ~~shall give notice of the hearing date to the parties at least 30 days prior to the date set for the arbitration hearing.~~

(Subd (a) amended and relettered effective January 1, 2004; adopted as part of unlettered subdivision effective July 1, 1976.)

(b) [Date of hearing; limitations] ~~No hearings shall be set for Saturdays or legal holidays,~~ Except upon the agreement of all parties and the arbitrator~~.~~, the arbitration hearing date must not be set:

(1) Earlier than 30 days after the date the arbitrator sends the notice of the hearing under (a); or

(2) On Saturdays, Sundays, or legal holidays.

(Subd (b) amended and relettered effective January 1, 2004; adopted as part of unlettered subdivision effective July 1, 1976.)

(c) [Hearing completion deadline] The hearing~~s~~ ~~shall~~ must be scheduled so as to be completed ~~not sooner than 35 days, nor~~ no later than 90 days from the date of the assignment of the case to the arbitrator, including any time due to continuances granted under rule ~~1607~~ 1608.

(Subd (c) amended and relettered effective January 1, 2004; adopted as part of unlettered subdivision effective July 1, 1976.)

(d) [Hearing location] The hearing~~s~~ ~~shall~~ must take place in appropriate facilities provided by the court or selected by the arbitrator. ~~As used in this paragraph, a hearing is completed upon filing of the arbitrator's award with the clerk pursuant to rule 1615(b).~~

(Subd (d) amended effective January 1, 2004.)

Rule 1607 amended and renumbered effective January 1, 2004; adopted as rule 1611 effective July 1, 1976; previously amended effective July 1, 1979, and January 1, 1992.

Rule ~~1607~~ 1608. Continuances

(a) [Stipulation to continuance; consent of arbitrator] Except as provided in ~~this rule~~ (c), the parties may stipulate to a continuance in the case, with the consent of the assigned arbitrator. An arbitrator ~~shall~~ must consent to a request for a continuance if it appears that good cause exists. Notice of the continuance ~~shall~~ must be sent to the ~~arbitration~~ ADR administrator.

(Subd (a) amended effective January 1, 2004; previously amended effective January 1, 1984, and January 1, 1992.)

(b) [Court grant of continuance] If the arbitrator declines to give consent to a continuance, upon the motion of a party and for good cause shown under the standards recommended in section 9 of the Standards of Judicial Administration, the court may grant a continuance of the arbitration hearing. In the event the court grants the motion, the party who requested the continuance ~~shall~~ must notify the arbitrator and the arbitrator ~~shall~~ must reschedule the hearing, giving notice to all parties to the arbitration proceeding.

(Subd (b) amended effective January 1, 2004; previously amended effective July 1, 1979.)

(c) [Limitation on length of continuance] An arbitration hearing ~~shall~~ must not be continued to a date later than 90 days after the assignment of the case to the arbitrator, including any time due to continuances granted under this rule,

except by order of the court upon the motion of a party as provided in ~~subdivision~~ (b).

(Subd (c) amended effective January 1, 2004; previously amended effective January 1, 1991 and January 1, 1994.)

Rule 1608 amended and renumbered effective January 1, 2004; adopted as rule 1607 effective July 1, 1976; previously amended effective July 1, 1979, January 1, 1984, January 1, 1991, January 1, 1992 and January 1, 1994.

Rule ~~1608~~ 1609. Arbitrator's fees

(a) **[Filing of award or notice of settlement required]** The arbitrator's award~~, or a notice of settlement signed by the parties or their counsel~~, must be timely filed with the clerk of the court under rule 1615(b) or a notice of settlement must have been filed before a fee may be paid to the arbitrator.

(Subd (a) amended effective January 1, 2004; previously amended effective July 1, 1979.)

(b) **[Exceptions for good cause]** On the arbitrator's verified ex parte application, the court may for good cause authorize payment of a fee:

(1) If the arbitrator devoted a substantial amount of time to a case that was settled without a hearing~~,~~; or

(2) If the award was not timely filed.

(Subd (b) amended effective January 1, 2004; previously amended effective July 1, 1979, and January 1, 1987.)

(c) **[Arbitrator's fee statement]** The arbitrator's fee statement ~~shall~~ must be submitted to the administrator promptly upon the completion of the arbitrator's duties, and ~~shall~~ must set forth the title and number of the cause arbitrated, the date of the arbitration hearing, and the date the award or settlement was filed.

(Subd (c) amended effective January 1, 2004; previously amended effective July 1, 1979.)

Rule 1609 amended and renumbered effective January 1, 2004; adopted as rule 1608 effective July 1, 1976; previously amended effective July 1, 1979, and January 1, 1987.

Rule ~~1609~~ 1610. Communication with the arbitrator

(a) [Disclosure of settlement offers prohibited] No disclosure of any offers of settlement made by any party ~~shall~~ may be made to the arbitrator prior to the filing of the award.

(Subd (a) amended and relettered effective January 1, 2004; adopted as part of unlettered subdivision effective July 1, 1976.)

(b) [Ex parte communication prohibited] ~~There shall be no ex parte communication by counsel or the parties with the arbitrator or a potential arbitrator except for the purpose of scheduling the arbitration hearing or requesting a continuance.~~ An arbitrator must not initiate, permit, or consider any ex parte communications or consider other communications made to the arbitrator outside the presence of all of the parties concerning a pending or impending arbitration, except as follows:

(1) An arbitrator may communicate with a party in the absence of other parties about administrative matters, such as setting the time and place of hearings or making other arrangements for the conduct of the proceedings, as long as the arbitrator reasonably believes that the communication will not result in a procedural or tactical advantage for any party. When such a discussion occurs, the arbitrator must promptly inform the other parties of the communication and must give the other parties an opportunity to respond before making any final determination concerning the matter discussed.

(2) An arbitrator may initiate or consider any ex parte communication when expressly authorized by law to do so.

(Subd (b) amended and relettered effective January 1, 2004; adopted as part of unlettered subdivision effective July 1, 1976.)

Rule 1610 amended and renumbered effective January 1, 2004; adopted as rule 1609 effective July 1, 1976.

Rule ~~1610~~ 1611. Representation by counsel; proceedings when party absent

(a) [Representation by counsel] A party to the arbitration has a right to be represented by an attorney at any proceeding or hearing in arbitration, but this right may be waived. A waiver of this right may be revoked, but if revoked, the

other party is entitled to a reasonable continuance for the purpose of obtaining counsel.

(Subd (a) amended effective January 1, 2004.)

(b) [Proceedings when party absent] The arbitration may proceed in the absence of any party who, after due notice, fails to be present and to obtain a continuance. An award ~~shall~~ must not be based solely upon the absence of a party. In the event of a default by defendant, the arbitrator ~~shall~~ must require the plaintiff to submit such evidence as may be appropriate for the making of an award.

(Subd (b) amended effective January 1, 2004.)

Rule 1611 amended and renumbered effective January 1, 2004; adopted as rule 1610 effective July 1, 1976.

Rule 1612. Discovery

The parties to the arbitration ~~shall~~ have the right to take depositions and to obtain discovery, and to that end may exercise all of the same rights, remedies, and procedures, and ~~shall be~~ are subject to all of the same duties, liabilities, and obligations as provided in part 4, title 3, chapter 3 of the Code of Civil Procedure, except that all discovery ~~shall~~ must be completed not later than 15 days prior to the date set for the arbitration hearing unless the court, upon a showing of good cause, makes an order granting an extension of the time within which discovery must be completed.

Rule 1612 amended effective January 1, 2004; adopted effective July 1, 1976; previously amended effective July 1, 1979.

Rule 1613. Rules of evidence at hearing

(a) [Presence of arbitrator and parties] All evidence ~~shall~~ must be taken in the presence of the arbitrator and all parties, except where any of the parties has waived the right to be present or is absent after due notice of the hearing.

(Subd (a) amended effective January 1, 2004.)

(b) [Application of civil rules of evidence] The rules of evidence governing civil ~~actions~~ cases apply to the conduct of the arbitration hearing, except:

(1) Any party may offer written reports of any expert witness, medical records and bills (including physiotherapy, nursing, and prescription bills), documentary evidence of loss of income, property damage repair bills or estimates, police reports concerning an accident which gave rise to the case, other bills and invoices, purchase orders, checks, written contracts, and similar documents prepared and maintained in the ordinary course of business.

(A) The arbitrator ~~shall~~ must receive them in evidence if copies have been delivered to all opposing parties at least 20 days prior to the hearing.

(B) Any other party may subpoena the author or custodian of the document as a witness and examine the witness as if under cross-examination.

(C) Any repair estimate offered as an exhibit, and the copies delivered to opposing parties, ~~shall~~ must be accompanied (i) by a statement indicating whether or not the property was repaired, and, if it was, whether the estimated repairs were made in full or in part, and (ii) by a copy of the receipted bill showing the items of repair made and the amount paid.

(D) The arbitrator ~~shall~~ must not consider any opinion as to ultimate fault expressed in a police report.

(2) The written statements of any other witness may be offered and ~~shall~~ must be received in evidence if:

~~(i)~~(A) They are made by affidavit or by declaration under penalty of perjury~~,~~;

~~(ii)~~(B) Copies have been delivered to all opposing parties at least 20 days prior to the hearing~~,~~; and

~~(iii)~~(C) No opposing party has, at least 10 days before the hearing, delivered to the proponent of the evidence a written demand that the witness be produced in person to testify at the hearing. The arbitrator ~~shall~~ must disregard any portion of a statement received pursuant to this rule that would be inadmissible if the witness were testifying in person, but the inclusion of inadmissible matter does not render the entire statement inadmissible.

(3) (A) The deposition of any witness may be offered by any party and ~~shall~~ must be received in evidence, subject to objections available under Code of Civil Procedure section 2025(g), notwithstanding that the deponent is not "unavailable as a witness" within the meaning of section 240 of the Evidence Code and no exceptional circumstances exist, if:

(i) The deposition was taken in the manner provided for by law or by stipulation of the parties and within the time provided for in these rules~~,~~; and

(ii) Not less than 20 days prior to the hearing the proponent of the deposition delivered to all opposing parties notice of intention to offer the deposition in evidence.

(B) The opposing party, upon receiving the notice, may subpoena the deponent and, at the discretion of the arbitrator, either the deposition may be excluded from evidence or the deposition may be admitted and the deponent may be further cross-examined by the subpoenaing party. These limitations are not applicable to a deposition admissible under the terms of section 2025(u) of the Code of Civil Procedure.

(Subd (b) amended effective January 1, 2004; previously amended effective July 1, 1979, January 1, 1984, January 1, 1988, and July 1, 1990.)

(c) [Subpoenas]

(1) ~~Subpenas shall issue for~~ The attendance of witnesses at arbitration hearings may be compelled through the issuance of subpoenas as provided in the Code of Civil Procedure, in section 1985 and elsewhere in part 4, title 3, chapters 2 and 3. It ~~shall be~~ is the duty of the party requesting the subpoena to modify the form of subpoena so as to show that the appearance is before an arbitrator, and to give the time and place set for the arbitration hearing.

(2) At the discretion of the arbitrator, nonappearance of a properly subpoenaed witness may be a ground for an adjournment or continuance of the hearing.

(3) If any witness properly served with a subpoena fails to appear at the arbitration hearing or, having appeared, refuses to be sworn or to answer, proceedings to compel compliance with the subpoena on penalty of

contempt may be had before the superior court as provided in Code of Civil Procedure section 1991 for other instances of refusal to appear and answer before an officer or commissioner out of court.

(Subd (c) amended effective January 1, 2004; previously amended effective July 1, 1979.)

(d) **[Delivery of documents]** For purposes of this rule, "delivery" of a document or notice may be accomplished manually or by mail in the manner provided by Code of Civil Procedure section 1013. If service is by mail, the times prescribed in this rule for delivery of documents, notices, and demands are increased by five days.

(Subd (d) amended effective January 1, 2004; adopted effective January 1, 1988.)

Rule 1613 amended effective January 1, 2004; adopted effective July 1, 1976; previously amended effective July 1, 1979, January 1, 1984, January 1, 1988, and July 1, 1990.

Rule 1614. Conduct of the hearing

(a) **[Arbitrator's powers]** The arbitrator ~~shall have~~ has the following powers; all other questions arising out of the case are reserved to the court:

(1) To administer oaths or affirmations to witnesses;

(2) To take adjournments upon the request of a party or upon his or her own initiative when deemed necessary;

(3) To permit testimony to be offered by deposition;

(4) To permit evidence to be offered and introduced as provided in these rules;

(5) To rule upon the admissibility and relevancy of evidence offered;

(6) To invite the parties, on reasonable notice, to submit trial briefs;

(7) To decide the law and facts of the case and make an award accordingly;

(8) To award costs, not to exceed the statutory costs of the suit; and

(9) To examine any site or object relevant to the case.

~~All other questions arising out of the case are reserved to the court.~~

(Subd (a) amended effective January 1, 2004.)

(b) [Record of proceedings]

(1) The arbitrator may, but is not required to, make a record of the proceedings.

(2) Any records of the proceedings made by or at the direction of the arbitrator ~~shall be~~ are deemed the arbitrator's personal notes and are not subject to discovery, and the arbitrator ~~shall~~ must not deliver them to any party to the case or to any other person, except to an employee using the records under the arbitrator's supervision or pursuant to a subpoena issued in a criminal investigation or prosecution for perjury.

(3) No other record ~~shall~~ may be made, and the arbitrator ~~shall~~ must not permit the presence of a stenographer or court reporter or the use of any recording device at the hearing, except as expressly permitted by ~~this rule~~ (1).

(Subd (b) amended effective January 1, 2004.)

Rule 1614 amended effective January 1, 2004; adopted effective July 1, 1976.

Rule 1615. The award; entry as judgment; motion to vacate

(a) [The award; form and content]

(1) The award ~~shall~~ must be in writing and signed by the arbitrator. It ~~shall~~ must determine all issues properly raised by the pleadings, including a determination of any damages and an award of costs if appropriate.

(2) The arbitrator is not required to make findings of fact or conclusions of law.

(Subd (a) amended effective January 1, 2004.)

(b) [Filing the award]

(1) Within 10 days after the conclusion of the arbitration hearing, the arbitrator ~~shall~~ must file the award with the clerk, with proof of service on

each party to the arbitration. On the arbitrator's application in cases of unusual length or complexity, the court may allow up to 20 additional days for the filing and service of the award.

(2) Within the time for filing the award, the arbitrator may file and serve an amended award.

(Subd (b) amended effective January 1, 2004; previously amended effective January 1, 1995.)

(c) [Entry of award as judgment]

(1) The clerk ~~shall~~ must enter the award as a judgment forthwith upon the expiration of 30 days after the award is filed if no party has, during that period, served and filed a request for trial as provided in these rules.

(2) Promptly upon entry of the award as a judgment the clerk ~~shall~~ must mail notice of entry of judgment to all parties who have appeared in the case and ~~shall~~ must execute a certificate of mailing and place it in the court's file in the case.

(3) The judgment so entered ~~shall have~~ has the same force and effect in all respects as, and is subject to all provisions of law relating to, a judgment in a civil ~~action~~ case or proceeding, except that it is not subject to appeal and it may not be attacked or set aside except as provided in ~~subdivision~~ (d). The judgment so entered may be enforced as if it had been rendered by the court in which it is entered.

(Subd (c) amended effective January 1, 2004; previously amended effective January 1, 1985.)

(d) [Vacating award]

(1) A party against whom a judgment is entered pursuant to an arbitration award may, within six months after its entry, move to vacate the judgment on the ground that the arbitrator was subject to a disqualification not disclosed before the hearing and of which the arbitrator was then aware, or upon one of the grounds set forth in section 473 or subdivisions (a)(1), (2), and (3) of section 1286.2 of the Code of Civil Procedure, and upon no other grounds.

(2) The motion ~~shall~~ must be heard upon notice to the adverse parties and to the arbitrator, and may be granted only upon clear and convincing evidence that the grounds alleged are true, and that the motion was made

as soon as practicable after the moving party learned of the existence of those grounds.

(Subd (d) amended effective January 1, 2004; previously amended effective January 1, 1983, and January 1, 2003.)

Rule 1615 amended effective January 1, 2004; adopted effective July 1, 1976; previously amended effective January 1, 1983, January 1, 1985, January 1, 1995, and January 1, 2003.

Rule 1616. Trial after arbitration

(a) **[Request for trial; deadline]** Within 30 days after the arbitration award is filed with the clerk of the court, a party may request a trial by filing with the clerk a request for trial, with proof of service of a copy upon all other parties appearing in the case. A request for trial filed after the parties have been served with a copy of the award by the arbitrator, but before the award has been filed with the clerk, shall be deemed valid and timely filed. The 30-day period within which to request trial may not be extended.

(Subd (a) amended effective January 1, 2004; previously amended effective January 1, 1985, and July 1, 1990.

(b) **[Restoring case to civil active list]** The case ~~shall~~ must be restored to the civil active list for prompt disposition, in the same position on the list it would have had if there had been no arbitration in the case, unless the court orders otherwise for good cause.

(Subd (b) amended effective January 1, 2004.)

(c) **[References to arbitration during trial prohibited]** The case ~~shall~~ must be tried as though no arbitration proceedings had occurred. No reference may be made during the trial to the arbitration award, to the fact that there had been arbitration proceedings, to the evidence adduced at the arbitration hearing, or to any other aspect of the arbitration proceedings, and none of the foregoing may be used as affirmative evidence, or by way of impeachment, or for any other purpose at the trial.

(Subd (c) amended effective January 1, 2004.)

(d) **[Costs after trial]** In assessing costs after the trial, the court ~~shall~~ must apply the standards specified in section 1141.21 of the Code of Civil Procedure.

(Subd (d) amended effective January 1, 2004; previously amended effective July 1, 1979.)

Rule 1616 amended effective January 1, 2004; adopted effective July 1, 1976; previously amended effective July 1, 1979, and July 1, 1990.

Rule 1617. Arbitration not pursuant to rules

These rules do not prohibit the parties to any civil ~~action~~ case or proceeding from entering into arbitration agreements pursuant to part 3, title 9 of the Code of Civil Procedure. Neither the ~~administrative~~ ADR committee nor the ~~arbitration~~ ADR administrator ~~shall~~ may take any part in the conduct of an arbitration under an agreement not in conformity with these rules except that the administrator may, upon joint request of the parties, furnish the parties to the agreement with a randomly selected list of at least three names of members of the appropriate panel of arbitrators.

Rule 1617 amended effective January 1, 2004; adopted effective July 1, 1976.

Rule 1618. Settlement of case

If a case is settled, ~~the parties shall~~ each plaintiff or other party seeking affirmative relief must notify the arbitrator and the court as required in rule 225 ~~at least two court days before the arbitration hearing date or the parties shall equally compensate the arbitrator in the total sum of $150~~.

Rule 1618 amended effective January 1, 2004; adopted effective January 1, 1992.

Rule 1902.5. Amount of undertakings

At the hearing of an application for appointment of a receiver on notice or ex parte, the applicant must, and other parties may, propose and state the reasons for the specific amounts of the undertakings required from the applicant by Code of Civil Procedure section 529, the applicant by Code of Civil Procedure section 566(b), and the receiver by Code of Civil Procedure section 567(b), for any injunction that is ordered in or with the order appointing a receiver.

Rule 1902.5 adopted effective January 1, 2004.

Rule 1908. Receiver's final account and report

(a) [Motion or stipulation] A receiver must present by noticed motion or stipulation of all parties:

(1) A final account and report ~~by noticed motion.~~;

(2) A request for the discharge; and

(3) A request for exoneration of the receiver's surety.

(Subd (a) amended and relettered effective January 1, 2004; adopted as part of unlettered subdivision effective January 1, 2002.)

(b) [No memorandum required] No memorandum needs to be submitted in support of the motion or stipulation served and filed under (a) unless the court so orders.

(Subd (b) adopted effective January 1, 2004.)

(c) [Notice] Notice of the motion or of the stipulation must be given to every person or entity known to the receiver to have a substantial, unsatisfied claim that will be affected by the order or stipulation, whether or not the person or entity is a party to the action or has appeared in it.

(Subd (c) adopted effective January 1, 2004.)

(d) [Claim for compensation for receiver or attorney] If any allowance of compensation for the receiver or for an attorney employed by the receiver is claimed in ~~the~~ an account, it must state in detail what services have been performed by the receiver or the attorney, and whether previous allowances have been made to the receiver or attorney and the amounts.

(Subd (d) amended and relettered effective January 1, 2004; adopted as part of unlettered subdivision effective January 1, 2002.)

Rule 1908 amended effective January 1, 2004; adopted effective January 1, 2002.

Rule 6.5. Notice and agenda of council meetings

(a) [Generally] The Judicial Council ~~shall~~ meets at the call of the Chief Justice no fewer than four times a year.

(Subd (a) amended effective January 1, 2004.)

(b) [Meeting schedule] The Administrative Office of the Courts ~~shall~~ must publish a regular annual schedule that states the planned date, purpose, and location of each meeting. Additional meetings may be scheduled as necessary.

(Subd (b) amended effective January 1, 2004.)

(c) [Notice of business meetings] "Business meetings" are council meetings at which a majority of voting members are present to discuss and decide matters within the council's jurisdiction. The Administrative Office of the Courts ~~shall~~ must give public notice of the date, location, and agenda of each business meeting at least seven days before the meeting. The notice ~~shall~~ must state whether the meeting is open or closed. If the meeting is partly closed, the notice ~~shall~~ must indicate which agenda items are closed. A meeting may be conducted without notice in case of an emergency requiring prompt action.

(Subd (c) amended effective January 1, 2004.)

(d) [Budget meetings] A "budget meeting" is that portion of any business meeting at which trial court budgets are to be discussed. The Administrative Office of the Courts must provide notice of a budget meeting in the same manner as any other business meeting. Budget meetings normally are scheduled as follows:

(1) A budget priority meeting, normally in February of each year, at which the Judicial Council adopts budget priorities for the trial courts for the budget year that begins July 1 of the next calendar year.

(2) A meeting at which the proposed budget is approved, normally in August of each year, at which the Judicial Council takes action on the following:

(A) Staff recommendations on trial court budget change requests for the next fiscal year;

(B) A total baseline budget for each trial court for the next fiscal year; and

(C) Any proposed changes in funding for a trial court.

(3) A budget allocation meeting, normally at the first council meeting after the state's budget is enacted, at which the Judicial Council approves the final budget allocations for each trial court, including approved budget adjustments.

(4) Other meetings following substantive changes to the trial court portion of the proposed State Budget made by the Governor in the proposed Governor's budget or by a committee or house of the Legislature, at which the Judicial Council will take appropriate action, if any.

(Subd (d) adopted effective January 1, 2004.)

~~(d)~~(e) [Form of notice] The notice and agenda for council meetings ~~are~~ must be posted at the Administrative Office of the Courts and on the ~~council's~~ Judicial branch's Web site (www.courtinfo.ca.gov). In addition, the notice and agenda for budget meetings must be provided to designated employee representatives who have submitted a written request to the Administrative Office of the Courts (attention Secretariat Office).

(Subd (e) amended and relettered effective January 1, 2004; adopted as subd (d) effective January 1, 1999.)

~~(e)~~(f) [Contents of agenda] The agenda ~~shall~~ must contain a brief description of each item to be considered at the council meeting. All items are classified as discussion items, consent items, or informational items.

(1) ***

(2) (*Moving consent items to discussion agenda*) A consent item ~~shall~~ must be moved to the discussion agenda if a council member so requests by giving 48 hours' advance notice to the Executive and Planning Committee, or if the Chief Justice moves the item to the discussion agenda.

(Subd (f) amended and relettered effective January 1, 2004; adopted as subd (e) effective January 1, 1999.

~~(f)~~(g) [Meeting materials]

(1) *(General materials)* General meeting materials ~~shall~~ must be distributed to council members at least three business days before the date of the

meeting, except in extraordinary circumstances. The Administrative Director may make copies of materials available to the media or attendees in advance of a business meeting and may specify that the materials are provided upon agreement by the recipient that they will be kept confidential until the council has discussed or acted upon specified items. The council may charge a fee to cover the costs of replicating and mailing these materials to members of the public.

(2) *(Budget materials)*

(A) *(When available)* Materials involving trial court budgets must be made available at least five business days before the meeting if they have been distributed by that time to the members of the council. All other materials involving trial court budgets must be made available at the same time as the information is distributed to the council.

(B) *(Distribution)* Materials must be made available by posting on the Judicial branch's Internet Web site and by distribution to designated employee representatives who have submitted a written request to the Administrative Office of the Courts (attention Secretariat Office).

(C) *(Contents at the budget approval meeting)* Material involving trial court budget proposals presented at the budget approval meeting must include proposed statewide requests for funding, existing trial court baseline budgets, adjustments proposed for any trial court baseline budget, and any court-specific budget change requests.

(Subd (g) amended and relettered effective January 1, 2004; adopted as subd (f) effective January 1, 1999.)

~~(g)~~(h) [Circulating orders] Between business meetings, the council may act by circulating order on urgent matters if the Chief Justice or the Administrative Director approves. Prior public notice of a proposed circulating order is not required. Each circulating order adopted by the council ~~shall~~ must be included on the agenda for the next business meeting as an information item.

(Subd (h) amended and relettered effective January 1, 2004; adopted as subd (g) effective January 1, 1999.)

Rule 6.5 amended effective January 1, 2004; adopted effective January 1, 1999.

Rule 6.6. Judicial Council meetings

(a) [Open meeting policy] Business meetings are open to the public unless they are closed under subdivision (b) of this rule. Other meetings, such as orientation, planning, and educational meetings, may be made open to the public at the discretion of the Chief Justice. The Chief Justice may seek a recommendation from the Executive and Planning Committee on whether all or part of any meeting should be open or closed. Any discussion or decision of the full council at a business meeting regarding a trial court budget allocation must take place in an open meeting of the council, except for an executive session as provided in subdivision (b).

(Subd (a) amended effective January 1, 2004.)

(b) ***

(c) [Conduct at meeting] Members of the public who attend open meetings ~~shall~~ must remain orderly. The Chief Justice may order the removal of any disorderly persons.

(Subd (c) amended effective January 1, 2004.)

(d) [Requests to speak—general] The Executive and Planning Committee, in its discretion, may allow a member of the public to speak at a business meeting. Unless the Chief Justice waives this requirement, any member of the public who wishes to speak at a business meeting ~~shall~~ must submit a request of no more than two pages to the chair of the Executive and Planning Committee by delivering it to the Administrative Office of the Courts at least four business days before the meeting.

(1) *(Contents of the request)* The request ~~shall~~ must include the following:

(A) A description of the agenda item to be addressed;

(B) A specific recitation of the proposed statement with an explanation of its relevance to the agenda item and the reasons it would be of benefit to the council in its deliberations;

(C) The name, residence, and occupation of the person asking to speak and, if applicable, the name, address, and purpose of the agency or organization that the speaker represents;

(D) If available, telephone and fax numbers and e-mail address of the person asking to speak and, if applicable and available, telephone and fax numbers of the agency or organization that the speaker represents;

(E) The words "Request to Speak at Judicial Council Meeting" displayed prominently in letters at least one-quarter-inch high on the envelope containing the request; and

(F) A copy of any written materials the speaker proposes to distribute at the meeting.

(2) (*Notice of decision*) The Executive and Planning Committee ~~shall~~ must respond to the request at least two business days before the meeting. The committee may grant the request in part or whole, request additional information, circulate any written materials, or take other action it deems appropriate.

(Subd (d) amended effective January 1, 2004.)

(e) [Presentation of information on trial court budget matters]

(1) *(Presentation of written information)* Any designated employee representative has a right to provide written information on trial court budget allocations to the council.

(2) *(Oral presentation)* Any designated employee representative who wishes to make an oral presentation to the Judicial Council must make a written request to the Administrative Office of the Courts (attention Secretariat Office) no later than 24 hours before the meeting unless the issue has arisen within the last five business days before the meeting, in which case the written request may be made on the day of the meeting.

(3) *(Limit on number and time)* The Chief Justice or his or her designee may limit the number and time of speakers in order to avoid cumulative discussion.

(Subd (e) adopted effective January 1, 2004.)

~~(e)~~(f) [Video recording, photographing, and broadcasting at meeting] The Chief Justice may permit video recording, photographing, or broadcasting of a meeting. Any such video recording, photographing, or broadcasting is subject to regulations that ensure the meeting's security and dignity. A request to

record, photograph, or broadcast a council meeting must be received by the Chief Justice at least two business days before the meeting.

(Subd (f) relettered effective January 1, 2004; adopted as subd (e) effective January 1, 1999.)

~~(f)~~(g) [Minutes as official records] The Secretary of the Judicial Council ~~shall~~ must prepare written minutes of each council meeting for approval at the next council meeting. When approved by the council, the minutes constitute the official record of the meeting.

(Subd (g) amended and relettered effective January 1, 2004; adopted as subd (f) effective January 1, 1999.)

Rule 6.6 amended effective January 1, 2004; adopted effective January 1, 1999.

Rule 6.31. Advisory committee membership and terms

(a) [Membership] The categories of membership of each advisory committee are specified in the rules in this chapter. Each advisory committee consists of between 12 and 18 members, unless a different number is specified by the Chief Justice or required by these rules. Advisory committee members do not represent a specific constituency but must act in the best interests of the public and the entire court system.

(b) [Terms] The Chief Justice appoints advisory committee members for three-year terms unless another term is specified in these rules. Terms are staggered so that an approximately equal number of each committee's members changes annually.

(c) [Chair and vice-chair] The Chief Justice appoints an advisory committee member to be a committee chair or vice-chair for a one-year term~~.~~ except for the ~~This subdivision does not apply to the~~ chair and vice-chair of the Court Executives Advisory Committee., which may be appointed for a two-year term. ~~which may chose its own chair and vice-chair.~~

(Subd (c) amended effective January 1, 2004; previously amended effective September 1, 2000.)

(d) [Advisory members] Upon the request of the advisory committee, the Chief Justice may designate an advisory member to assist an advisory committee or a subcommittee. Advisory members may participate in discussions and make or second motions but cannot vote.

(e) [Termination of membership] Committee membership terminates if a member leaves the position that qualified the member for the advisory committee unless the Chief Justice determines that the individual may complete the current term.

(f) [Vacancies] Vacancies shall be filled as they occur according to the nomination procedures described in rule 6.32.

(g) [Retired judges] A judge's retirement does not cause a vacancy on the committee if the judge is eligible for assignment. A retired judge who is eligible for assignment may hold a committee position based on his or her last judicial position.

Rule 6.31 amended effective January 1, 2004; adopted effective January 1, 1999; previously amended effective September 1, 2000, and September 1, 2003.

Rule 6.45. Judicial Branch Budget Advisory Committee

(a)–(c) ***

(d) [Duties and responsibilities] The committee provides advice and advocacy to ensure that the judicial branch budget as developed and adopted is consistent with Judicial Council goals. In carrying out this duty, the committee must:

(1) Provide recommendations to the Judicial Council on budget priorities to guide the development of the budget for the fiscal year presently being developed. The committee considers all relevant factors including:

(A) Recommendations from other advisory committees on budget priorities;

(B) Recommendations from the trial and appellate courts;

(C) Input from the members of the public, including any designated trial court employee representative;

~~(C)~~(D) The fiscal condition of the state;

~~(D)~~(E) Other factors and trends affecting the judicial system and the state; and

~~(E)~~(F) The progress of the courts and other judicial branch agencies in meeting the goals established by the Judicial Council.

(2)–(4) ***

(Subd (d) amended effective January 1, 2004.)

Rule 6.45 amended effective January 1, 2004; repealed and adopted effective January 1, 2002.

Rule 6.48. Court Executives Advisory Committee

(a) [Area of focus] The committee ~~shall~~ makes recommendations to the council on policy issues affecting the trial courts.

(Subd (a) amended effective January 1, 2004.)

(b) [Additional duties] In addition to the duties specified in rule 6.34, the committee ~~shall~~ must:

(1) Recommend methods and policies to improve trial court administrators' access to and participation in council decision making;

(2) Review and comment on legislation, rules, forms, standards, studies, and recommendations concerning court administration proposed to the council;

(3) Review and make proposals concerning the Judicial Branch Statistical Information System or other large-scope data collection efforts;

(4) Suggest methods and policies to increase communication between the council and the trial courts; ~~and~~

(5) Serve as the Executive Committee for the Conference of Court Executives, as described in rule 6.49~~;~~ and

(6) Meet periodically with the Administrative Office of the Courts Directors to enhance branch communications.

(Subd (b) amended effective January 1, 2004.)

(c) [Consultation with Conference of Court Executives] To assist it in formulating proposals and recommendations to the council, the committee may seek the advice of the Conference of Court Executives.

(d) [Membership] The committee shall consist of the following members;

~~(1) Up to 22 court administrators or executive officers; and~~

(1) Nine executive officers from trial courts that have 48 or more judges;

(2) Four executive officers from trial courts that have 16 to 47 judges;

(3) Two executive officers from trial courts that have 6 to 15 judges;

(4) Two executive officers from trial courts that have 2 to 5 judges;

(5) One member from the six clerk administrators of the courts of appeal selected from three nominations made by the Appellate Court Clerks Association; and

(6) One at-large member appointed from the trial courts by the committee chair for a one-year term.

~~(2) One appellate court clerk or administrator selected from three nominations made by the Appellate Court Clerks Association.~~

(Subd (d) amended effective January 1, 2004.)

(e) [Nominations] The Conference of Court Executives ~~shall~~ must submit to the Court Executives Advisory Committee ~~Executive and Planning Committee of the Judicial Council a list of three~~ nominations~~ees~~ for each vacancy on the committee. The Court Executives Advisory Committee will recommend three nominees for each committee vacancy from the nominations received and submit their recommendations to the Executive and Planning Committee of the Judicial Council. The list of nominees ~~shall~~ must enable the Chief Justice to appoint a committee that reflects a variety of experience, expertise, ~~court sizes~~, and types (e.g., urban, suburban, and rural) a~~s well as small, medium, and large~~), that is geographically balanced. Membership on this committee ~~shall~~ does not preclude appointment to any other advisory committee or task force.

(Subd (e) amended effective January 1, 2004.)

(f) [Chair and vice-chair] The Chief Justice appoints the chair and vice-chair of the committee for a two-year term from the current membership of the Court Executives Advisory Committee. ~~committee may elect its chair and vice-chair.~~

(Subd (f) amended effective January 1, 2004.)

Rule 6.48 amended effective January 1, 2004; adopted effective January 1, 1999.

Rule 6.49. Conference of Court Executives

(a) [Function] The functions of the Conference of Court Executives are to:

(1) Increase the opportunities for court executive officers to participate in the Judicial Council decision-making process; and

(2) Provide a forum for the education of court executives.

(b) [Duties] The Conference of Court Executives ~~shall~~ must:

(1) Provide information and advice, when requested, to the Court Executives Advisory Committee; and

(2) Conduct educational sessions for its members on matters related to court management, such as legislation, training, information management, judicial branch policy issues, professional development, best practices, and current issues facing the trial courts.

(Subd (b) amended effective January 1, 2004.)

(c) [Membership] All court executive officers and clerk administrators of the courts of appeal are ~~principal~~ members of the Conference of Court Executives. ~~Chief deputies (or their equivalents) are associate members of the Conference of Court Executives. Each principal member is entitled to one vote. Associate members may fully participate in conference meetings but may not vote or make or second motions.~~ ~~However, a~~ A court executive who is unable to participate in a meeting may designate his or her deputy to vote in his or her place.

(Subd (c) amended effective January 1, 2004.)

(d) [Chair and vice-chair] The chair and vice-chair of the Court Executives Advisory Committee ~~conference~~ are the chair and vice-chair of the conference. ~~Court Executives Advisory Committee.~~

(Subd (d) amended effective January 1, 2004.)

(e) [Executive Committee] The conference's Executive Committee is the Court Executives Advisory Committee. The Executive Committee ~~shall~~ must:

(1) Establish the schedule and agenda for meetings; and

(2) As necessary, appoint subcommittees consisting of principal and associate members of the conference.

(Subd (e) amended effective January 1, 2004.)

(f) [Nominations subcommittee] The Court Executives Advisory Committee ~~chair shall appoint a Nominations Subcommittee to shall~~ must submit to the Executive and Planning Committee of the Judicial Council nominations for members of the committee, the advisory members of the Judicial Council who are court executives, and members of other advisory committees who are court executives or judicial administrators.

(Subd (f) amended effective January 1, 2004.)

(g) [Meetings] The conference ~~shall~~ must meet during at least two statewide meetings ~~three times~~ a year. One meeting must be held at the annual California Judicial Administration Conference. The conference must also meet at least two times a year by region for court administration updates, focused discussions, and educational opportunities. ~~and one shall be held after the conclusion of the regular legislative session.~~

(Subd (g) amended effective January 1, 2004.)

(h) [Reimbursement for meetings] Reimbursement for meeting travel per diem expenses for conference members will be subject to availability of funds.

(Subd (h) adopted effective January 1, 2004.)

Rule 6.49 amended effective January 1, 2004; adopted effective January 1, 1999.

Rule ~~989.7.~~ 6.102. Acceptance of gifts

(a) The ~~Chief Justice or the Chief Justice's designee~~Administrative Director of the Courts may accept on behalf of any~~agency provided for in article VI of the Constitution~~ entity listed in (b) any gift of real or personal property if the gift and any terms and conditions are found to be in the best interest of the State. Any applicable standards used by the Director of Finance under Government Code section 11005.1 may be considered in accepting gifts.

(Subd (a) lettered and amended effective January 1, 2004; adopted as unlettered subdivision effective September 13, 1991.)

(b) The Administrative Director may delegate the authority to accept gifts to the following, under any guidelines established by the Administrative Office of the Courts:

(1) The executive officer of a superior court, for gifts to the superior court;

(2) The clerk/administrator of a Court of Appeal, for gifts to a Court of Appeal;

(3) The clerk of the Supreme Court, for gifts to the Supreme Court; and

(4) The Director of the Finance Division of the Administrative Office of the Courts, for gifts to the Judicial Council and the Administrative Office of the Courts.

(Subd (b) adopted effective January 1, 2004.)

Rule 6.102 amended and renumbered effective January 1, 2004; adopted as rule 989.7 effective September 13, 1991.

Rule 6.103. Limitation on intrabranch contracting

(a) [Definitions] For purposes of this rule, "judicial branch entity" includes a trial court, a Court of Appeal, the Supreme Court, and the Administrative Office of the Courts.

(b) [Application] This rule does not apply to:

(1) Part-time commissioners, with respect to services as a commissioner;

(2) Part-time court interpreters who are not subject to the cross-assignment system under Government Code section 71810, with respect to interpreter services provided to a court; and

(3) Court reporters, with respect to reporter services provided to a court.

(c) [Intrabranch limitations] An employee of a judicial branch entity must not:

(1) Engage in any employment, enterprise, or other activity

(A) from which he or she receives compensation or in which he or she has a financial interest, and

(B) that is sponsored or funded by any judicial branch entity through or by a contract for goods or services for which compensation is paid, unless the activity is required as a condition of his or her regular judicial branch employment; or

(2) Contract with any judicial branch entity, on his or her own behalf, to provide goods or services for which compensation is paid.

(d) [Multiple employment] This rule does not prohibit any person from being employed by more than one judicial branch entity.

Rule 6.103 adopted effective January 1, 2004.

Rule 6.104. Limitation on contracting with former employees

(a) [Trial and appellate court contracts with former employees] A trial or appellate court may not enter into a contract for goods or services for which compensation is paid with a person previously employed by that court or by the Administrative Office of the Courts:

(1) For a period of 12 months following the date of the former employee's retirement, dismissal, or separation from service, if he or she was employed in a policymaking position in the same general subject area as the proposed contract within the 12-month period before his or her retirement, dismissal, or separation; or

(2) For a period of 24 months following the date of the former employee's retirement, dismissal, or separation from service, if he or she engaged in

any of the negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to the contract while employed in any capacity by the court or the Administrative Office of the Courts.

(b) [Administrative Office of the Courts contracts with former employees] The Administrative Office of the Courts may not enter into a contract for goods or services for which compensation is paid with a person previously employed by it:

(1) For a period of 12 months following the date of the employee's retirement, dismissal, or separation from service, if he or she was employed in a policymaking position at the Administrative Office of the Courts in the same general subject area as the proposed contract within the 12-month period before his or her retirement, dismissal, or separation.

(2) For a period of 24 months following the date of the former employee's retirement, dismissal, or separation from service, if he or she engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to the contract while employed in any capacity by the Administrative Office of the Courts.

(c) [Policymaking position] "Policymaking position" includes:

(1) In a trial court, the court's executive officer and any other position designated by the court as a policymaking position;

(2) In an appellate court, the clerk/administrator and any other position designated by the court as a policymaking position; and

(3) In the Administrative Office of the Courts, the Administrative Director of the Courts, the Chief Deputy Director, any director, and any other position designated by the Administrative Director as a policymaking position.

(d) [Scope] This rule does not prohibit any court or the Administrative Office of the Courts from (1) employing any person or (2) contracting with any former judge or justice.

Rule 6.104 adopted effective January 1, 2004.

Rule 6.301. Ethics training for Judicial Council members and judicial branch employees

(a) [Authority] This rule is adopted under section 11146 et seq. of the Government Code and article VI, section 6 of the California Constitution.

(b) [Definitions] For purposes of this rule, "judicial branch employee" includes an employee of a trial or appellate court or the Administrative Office of the Courts, but does not include court commissioners or referees.

(c) [Judicial Council members and judicial branch employees]

(1) The Administrative Office of the Courts must provide an ethics orientation course for Judicial Council members and for judicial branch employees who are required to file a statement of economic interests.

(2) Judicial Council members must take the orientation course within six months of appointment. If a member is appointed to a subsequent term, he or she must take the course within six months of the reappointment.

(3) Judicial branch employees who are required to file a statement of economic interests must take the orientation course as follows:

(A) For employees who have taken the orientation course before the effective date of this rule, at least once during each consecutive two calendar years after the date of the last attendance.

(B) For new employees, within six months of becoming an employee and at least once during each consecutive two calendar years thereafter.

(C) For all other employees, within six months of the effective date of this rule and at least once during each consecutive two calendar years thereafter.

Rule 6.301 adopted effective January 1, 2004.

Rule 6.702. Maintenance of and public access to budget and management information

(a) [Maintenance of information by ~~county~~ trial court ~~systems~~] The trial court ~~system~~ of each county ~~shall~~ must maintain for a period of three years from the close of the fiscal year to which the following relate:

(1) Official documents of the ~~county~~ trial court ~~system~~ pertaining to the approved ~~county~~ trial court ~~system~~ budget allocation adopted by the Judicial Council and actual final year-end trial court revenue and expenditure reports as required in budget procedures issued by the Administrative Office of the Courts to be maintained or reported to the council, including but not limited to budget allocation, revenue, and expenditure reports;

(2)–(3) ***

(Subd (a) amended effective January 1, 2004.)

(b) [Maintenance of information by the Administrative Office of the Courts] The Administrative Office of the Courts ~~shall~~ must maintain for a period of three years from the close of the fiscal year to which the following relate:

(1) Official approved budget allocations for each ~~county~~ trial court ~~system~~;

(2) Actual final year-end trial court revenue and expenditure reports required by budget procedures issued by the Administrative Office of the Courts to be maintained or reported to the council that are received from the ~~county~~ trial courts ~~systems~~ including but not limited to budget revenues and expenditures for each ~~county~~ trial court ~~system~~;

(3) ***

(4) Documents concerning ~~county~~ trial court ~~system~~ budgets considered or adopted by the council at council business meetings on ~~county~~ trial court ~~system~~ budgets.

(Subd (b) amended effective January 1, 2004.)

(c) [Legislative priorities or mandates] The information maintained under ~~subdivisions~~ (a) and (b) ~~shall~~ must indicate, to the extent known, the legislative

requirements the funding is intended to address, if any; and any itemization of the funding allocation by purpose, program or function, and item of expense.

(Subd (c) amended effective January 1, 2004.)

(d) [Public access]

(1) Each ~~county~~ trial court ~~system shall~~ must, upon written request, make available to the requesting person those documents required to be maintained under ~~subdivision~~ (a) of this rule.

(2) The Administrative Office of the Courts ~~shall~~ must, upon written request, make available to the requesting person those documents required to be maintained under ~~subdivision~~ (b) of this rule.

(Subd (d) amended effective January 1, 2004.)

(e) [Time for response] Information requested under this rule ~~shall~~ must be made available within 10 business days of receipt of the written request for information relating to the current or immediate previous fiscal year. Information relating to other fiscal years ~~shall~~ must be made available within 20 business days of receipt of the written request for information. If the information requested is not within the scope of this rule, the Administrative Office of the Courts or the ~~county~~ trial court ~~system shall~~ must so inform the requesting party within 10 business days of receipt of the written request.

(Subd (e) amended effective January 1, 2004.)

(f) [Costs] The Administrative Office of the Courts and the ~~county~~ trial court ~~system~~ may charge a reasonable fee to cover any cost of copying any document provided under this rule. The amount of the fee ~~shall~~ must not exceed the direct cost of duplication. A recognized employee organization and a ~~county~~ trial court ~~system~~ may provide for a different amount in their memorandum of understanding.

(Subd (f) amended effective January 1, 2004.)

(g) [Preparation of reports not required] This rule does not require the council, the Administrative Office of the Courts, or any ~~county~~ trial court ~~system~~ to prepare any budgetary, revenue, or expense report or documentation that is not otherwise expressly required to be prepared by this rule or any other provision of law or rule of court.

(Subd (g) amended effective January 1, 2004.)

(h) [Budget meeting] The provisions in this subdivision shall apply to that portion of any full council meeting at which county trial court system budgets are to be discussed. These provisions do not apply to other meetings such as orientation, planning, or educational meetings.

(1) The council shall provide notice of the meeting at least five business days prior to the meeting.

(2) The council shall make available at least five business days prior to the meeting all information concerning county trial court system budgets that has been distributed to the council by that time.

(3) The council shall make available all other information concerning county trial court system budgets that is distributed to the council at the same time as that information is distributed to the council.

(4) Any discussions or decisions of the full council at its business meetings regarding county trial court system budget allocations shall take place in open meetings of the council except for executive sessions regarding pending litigation.

(5) Any designated employee representative has a right to provide written information on county trial court system budget allocations to the council.

(6) Any designated employee representative who wishes to make an oral presentation to the council shall make a written request to the Administrative Office of the Courts (attention Secretariat Office) no later than 24 hours before the meeting unless the issue has arisen within the last five business days before the meeting in which case the written request may be made on the day of the meeting. The Chief Justice or his or her designee may limit the number and time of speakers in order to avoid cumulative discussion.

(7) The notice and information required to be provided by this subdivision shall be provided to designated employee representatives who have submitted a written request to the Administrative Office of the Courts (attention Secretariat Office) to be notified and provided information and shall also be posted on the council's Internet Web site.

(Subd (h) repealed effective January 1, 2004; amended effective July 1, 2001, and July 1, 2002.)

~~(i)~~**(h)** **[Effect on other rules]** This rule is not intended to repeal, amend, or modify the application of any rule adopted by the council prior to the effective date of this rule. To the extent that any other rule is contrary to the provisions of this rule, this rule ~~shall apply~~ applies.

(Subd (h) amended and relettered effective January 1, 2004; adopted as subd (i) effective January 1, 2001.)

~~(j)~~**(i)** **[Public Records Act]** The information required to be provided by ~~subdivisions~~ (a) and (b) of this rule ~~shall~~ must be interpreted consistently with the requirement that the same information be provided under the Public Records Act (beginning with section 6250 of the Government Code), and the terms have the same meaning as under that act. This rule ~~shall~~ does not require the disclosure of information which would not be subject to disclosure under that act.

(Subd (i) amended and relettered effective January 1, 2004; adopted as subd (j) effective January 1, 2001.)

~~(k)~~**(j)** **[Internal memoranda]** Nothing in this rule ~~shall~~ requires disclosure of internal memoranda unless otherwise required by law.

(Subd (j) amended and relettered effective January 1, 2004; adopted as subd (k) effective January 1, 2001.)

~~*(l)*~~**(k)** **[Rights of exclusive bargaining agent]** Nothing in this rule is intended to restrict the rights to disclosure of information otherwise granted by law to a recognized employee organization.

*(Subd (k) relettered and amended effective January 1, 2004; adopted as subd (*l*) effective January 1, 2001.)*

(l) **[Informational sessions]** The Administrative Office of the Courts will provide informational sessions and materials on trial court budgets for the general public and designated employee representatives. The information will include the following areas, among others:

(1) Description and timing of the budget development process, including decisions made at each phase of the cycle, and how budget priorities are determined;

(2) Availability of budget information, including the type of information available, when it is available, and how it can be obtained; and

(3) The authority of a trial court to reallocate funds between budget program components.

(Subd (l) adopted effective January 1, 2004.

Rule 6.702 amended effective January 1, 2004; adopted effective January 1, 2001; previously amended effective July 1, 2001, and July 1, 2002.

Rule 7.51. Service of notice of hearing

(a)–(b) ***

(c) [Notice to guardian or conservator]

(1) When a guardian or conservator has been appointed for a person entitled to notice, the notice must be sent to the guardian or conservator. ~~and,~~

(2) A copy of the notice must also be sent to the ward or conservatee unless:

(A) The court ~~has dispensed~~ dispenses with such notice; or~~, to the ward or conservatee.~~

(B) Under Probate Code section 1210 in a decedent's estate proceeding, the notice is personally served on a California-resident guardian or conservator of the estate of the ward or conservatee.

(Subd (c) amended effective January 1, 2004.)

(d)–(e) ***

Rule 7.51 amended effective January 1, 2004; adopted effective January 1, 2003.

Rule 7.551. Final accounts or reports in estates with nonresident beneficiaries

(a) [Final account] Under Revenue and Taxation Code section 19513 and the regulations of the Franchise Tax Board, the court must not approve a final account in an estate that has a total appraised value greater than $1,000,000 and from which more than $250,000 in the aggregate has been distributed or is distributable to beneficiaries who are not residents of California, until the executor or administrator has filed the Franchise Tax Board's state income tax certificate showing that all state personal income taxes, additions to tax,

penalties, and interest imposed on the estate or the decedent have been paid or that payment has been secured.

(b) [Final report] If a final account is waived under Probate Code section 10954 in an estate described in (a), the court must not approve the final report required by section 10954(c)(1) until the executor or administrator has filed the Franchise Tax Board's state income tax certificate showing that all state personal income taxes, additions to tax, penalties, and interest imposed on the estate or the decedent have been paid or that payment has been secured.

(c) [Expiration date of certificate] If the certificate described in (a) or (b) is issued on the condition that the final account or report must be approved before a date specified in the certificate, the court must not approve the final account or report after that date unless the executor or administrator first files a new or revised certificate.

Rule 7.551 adopted effective January 1, 2004.

Rule 7.651. Description of property in petition for distribution

(a) [Property description] A petition for distribution must list and describe in detail the property to be distributed, in the body of the petition or in an attachment that is incorporated in the petition by reference. If an account is filed with the petition, the description must be included in a schedule in the account.

(b) [Specific description requirements] The description under (a) must:

(1) Include the amount of cash on hand;

(2) Indicate whether promissory notes are secured or unsecured, and describe in detail the security interest of any secured notes;

(3) Include the complete legal description, street address (if any), and assessor's parcel number (if any) of real property; and

(4) Include the complete description of each individual security held in "street name" in security brokers' accounts.

Rule 7.651 adopted effective January 1, 2004.

Rule 7.652. Allegations in petition for distribution concerning character of property

(a) [Required allegations] If the character of property to be distributed may affect the distribution, a petition for distribution must allege:

(1) The character of the property to be distributed, whether separate, community, or quasi-community; and

(2) That the community or quasi-community property to be distributed is either the decedent's one-half interest only, or the entire interest of the decedent and the decedent's spouse.

(b) [Compliance with Probate Code section 13502] If any property is to be distributed outright to the surviving spouse, a written election by the surviving spouse that complies with Probate Code section 13502 must have been filed, and the petition must show the filing date of the election.

Rule 7.652 adopted effective January 1, 2004.

Rule 7.1003 Confidential guardianship status report form

(a) [Due date of status report] Each guardian required by the court to complete, sign, and file the status report authorized by Probate Code section 1513.2 must file the completed and signed report no later than one month after the anniversary of the date of the order appointing him or her as guardian. Co-guardians may sign and file their reports jointly.

(b) [Court clerk's duties] The clerk of each court that requires guardians to file the status report authorized by Probate Code section 1513.2 must:

(1) Determine the annual due date for the completed report from each appointed guardian required to file the report;

(2) Fill in the due date for the completed report, in the space provided in the form for that purpose, on each blank copy of the form that must be mailed to appointed guardians under (3); and

(3) Mail by first class mail to each appointed guardian no later than one month prior to the date the status report is due under (a) a blank copy of

Judicial Council form GC-251, *Confidential Guardianship Status Report*, for each child under guardianship under the same case number.

Rule 7.1003 adopted effective January 1, 2004.

Rule 7.1004. Termination of guardianship

(a) **[Operation of law or court order]** A guardianship of the person or estate of a minor may terminate by operation of law or may be terminated by court order where the court determines that it would be in the ward's best interest to terminate the guardianship.

(b) **[Guardian of the person]** Under Probate Code section 1600 a guardianship of the person terminates by operation of law, and the guardian of the person need not file a petition for its termination, when the ward attains majority, dies, is adopted, or is emancipated.

(c) **[Duty of guardian of estate on termination]** A guardian of the estate whose administration is terminated by operation of law or court order must file and obtain the court's approval of a final account or report of the administration.

Rule 7.1004 adopted effective January 1, 2004.

Rule 7.1005. Service of copy of final account or report after resignation or removal of guardian

A resigned or removed guardian of the estate must serve a copy of the guardian's final account or report and the petition for its settlement, with the notice of hearing that must be served on the successor guardian of the estate under Probate Code section 1460(b)(1), unless the court dispenses with such service.

Rule 7.1005 adopted effective January 1, 2004.

Rule 7.1006. Service of copy of final account on termination of guardianship

(a) **[Minor living]** In addition to service of notices of hearing required under Probate Code section 1460(b), on termination of the guardianship the guardian of the estate must serve a copy of the guardian's final account and petition for its settlement on the minor, unless the court dispenses with such service.

(b) **[Personal representative of deceased minor]** If the minor is deceased, in addition to service of notices of hearing required under Probate Code section 1460(b), on termination of the guardianship the guardian of the estate must serve a notice of hearing and a copy of the guardian's final account and petition for its settlement on the personal representative of the deceased minor's estate, unless the court dispenses with such service.

(c) **[Successors in interest to deceased minor]** If the minor is deceased and no personal representative of the minor's estate has been appointed or qualified or if the personal representative of the minor's estate is also the guardian, on termination of the guardianship, in addition to the notices of hearing required under Probate Code section 1460(b), the guardian of the estate must serve a notice of hearing and a copy of the guardian's final account and petition for its settlement on the persons entitled to succeed to the deceased minor's estate, unless the court dispenses with such service.

Rule 7.1006 adopted effective January 1, 2004.

Rule 7.1007. Settlement of accounts and release by former minor

(a) **[Release of guardian of estate by ward after majority]** A ward who has attained majority may settle accounts with his or her guardian of the estate and may give a valid release to the guardian if the court determines, at the time of the hearing on the final account, or on the final report and petition for termination on waiver of account, that the release has been obtained fairly and without undue influence. The release is not effective to discharge the guardian until one year after the ward has attained majority.

(b) **[Appearance of ward]** The court may require the personal appearance of the ward at the hearing on the final account or report of the guardian of the estate after termination of the guardianship.

Rule 7.1007 adopted effective January 1, 2004.

Chapter 22. Conservatorships

Rule 7.1052. Termination of conservatorship

(a) [Operation of law or court order] A conservatorship of the person or estate may terminate by operation of law or may be terminated by court order if the court determines that it is no longer required.

(b) [Conservator of the person] Under Probate Code section 1860(a), a conservatorship of the person terminates by operation of law when the conservatee dies, and the conservator of the person need not file a petition for its termination.

(c) [Duty of conservator of estate on termination] A conservator of the estate whose administration is terminated by operation of law or by court order must file and obtain the court's approval of a final account of the administration.

Rule 7.1052 adopted effective January 1, 2004.

Rule 7.1053. Service of final account of removed or resigned conservator

A resigned or removed conservator of the estate must serve a copy of the conservator's final account and the petition for its settlement with the notice of hearing that must be served on the successor conservator of the estate under Probate Code section 1460(b)(1), unless the court dispenses with such service.

Rule 7.1053 adopted effective January 1, 2004.

Rule 7.1054. Service of final account after termination of conservatorship.

After termination of the conservatorship, the conservator of the estate must serve copies of the conservator's final account and the petition for its settlement with the notices of hearing that must be served on the former conservatee and on the spouse or domestic partner of the former conservatee under Probate Code sections 1460(b)(2) and (3), unless the court dispenses with such service.

Rule 7.1054 adopted effective January 1, 2004.

Standards of Judicial Administration

Sec. 2. Case~~flow~~ management and delay reduction—statement of general principles

(a) **[Elimination of all unnecessary delays]** Trial courts should be guided by the general principle that from the commencement of litigation to its resolution, whether by trial or settlement, any elapsed time other than reasonably required for pleadings, discovery, preparation, and court events is unacceptable and should be eliminated.

(Subd (a) amended and relettered effective January 1, 2004; adopted as part of unlettered subdivision effective July 1, 1987.)

(b) **[Court responsible for the pace of litigation]** To enable the just and efficient resolution of cases the court, not the lawyers or litigants, should control the pace of litigation. A strong judicial commitment is essential to reducing delay and, once achieved, maintaining a current docket.

(Subd (b) relettered effective January 1, 2004; adopted as part of unlettered subdivision effective July 1, 1987.)

(c) **[Presiding judge's role]** The presiding judge of each court should take an active role in advancing the goals of delay reduction and in formulating and implementing local rules and procedures to accomplish the following:

(1) The expeditious and timely resolution of cases, after full and careful consideration consistent with the ends of justice;

(2) The identification and elimination of local rules, forms, practices, and procedures that are obstacles to delay reduction, are inconsistent with statewide case management rules, or ~~that~~ prevent the court from effectively managing its cases;

(3) The formulation and implementation of a system of tracking cases from filing to disposition; and

(4) The training of judges and nonjudicial administrative personnel in delay reduction rules and procedures adopted in the local jurisdiction.

(Subd (c) amended and relettered effective January 1, 2004; adopted as part of unlettered subdivision effective July 1, 1987.)

Sec. 2 amended effective January 1, 2004; adopted effective July 1, 1987; previously amended effective January 1, 1994.

Sec. 2.1 ~~Superior~~ Trial court case~~/~~ disposition time standards

(a) [Trial Court Delay Reduction Act] The recommended time standards in this section are adopted ~~pursuant to~~ under ~~chapter 1335 of the Statutes of 1986 (Gov. Code, § 68603)~~ Government Code sections 68603 and 68620.

(Subd (a) amended effective January 1, 2004; adopted effective July 1, 1987; relettered effective January 1, 1989.)

(b) [Statement of purpose] These recommended time standards are intended to guide the trial courts in applying the policies and principles of section 2 of the Standards of Judicial Administration. They are administrative, justice-oriented guidelines to be used in the management of the courts. They are intended to improve the administration of justice by encouraging prompt disposition of all matters coming before the courts. The standards establish goals for all cases filed and are not meant to create deadlines for individual cases. Through its case management practices, a court may achieve or exceed the goals stated in these standards for the overall disposition of cases. The standards should be applied in a fair, practical, and flexible manner. They are not to be used as the basis for sanctions against any court or judge.

(Subd (b) amended effective January 1, 2004; adopted effective July 1, 1987 as subd (1); relettered effective January 1, 1989.)

(c) [Definition] The definition of "general civil case" in rule 200.1(2) applies to this section. It includes both unlimited and limited civil cases.

(Subd (c) adopted effective January 1, 2004.)

~~(c)~~(d) [~~Superior court~~ Civil cases—processing time goals] The goal of each ~~superior~~ trial court should be to process general civil cases ~~to meet the following goals:~~ so that

~~(1) By January 1, 1989, all cases should be disposed within four years of filing;~~

~~(2) By January 1, 1990, all cases should be disposed within three years of filing;~~

~~(3) After January 1, 1991,~~ all cases ~~should be~~ are disposed of within two years of filing.

(Subd (d) amended and relettered effective January 1, 2004; adopted effective July 1, 1987, as subd (2); previously amended effective July 1, 1988; amended and relettered as subd (c) effective January 1, 1989.)

~~(d)~~(e) [~~Superior court~~ Civil cases—rate of disposition] Each ~~superior~~ trial court should dispose of at least as many civil cases as are filed each year and, if necessary to meet the case-processing standard~~s~~ in ~~subdivision (c)~~(d), dispose of more cases than are filed. As the court disposes of inactive cases, it should identify active cases that may require judicial attention.

(Subd (e) amended and relettered effective January 1, 2004; adopted effective July 1, 1987, as subd (3); previously amended effective July 1, 1988; previously amended and relettered as subd (d) effective January 1, 1989.)

~~**(e) [Definition]** As used in this section, "general civil case" means all civil cases except probate, guardianship, conservatorship, family law, juvenile proceedings, and "other civil petitions" as defined in the Regulations on Superior Court Reports to the Judicial Council.~~

(Subd (e) repealed effective January 1, 2004; adopted effective July 1, 1987, as subd (4); amended effective January 1, 1988; amended and relettered effective January 1, 1989.)

~~**(f) [Felony cases]** Except for capital cases, all felony cases disposed of should have a total elapsed processing time of no more than one year from first appearance in any court to disposition.~~

(Subd (f) repealed effective January 1, 2004; adopted effective July 1, 1987 as subd (5); amended effective January 1, 1988; amended and relettered effective January 1, 1989.)

~~**(g) [Exceptional cases]** A civil case that involves exceptional circumstances or will require continuing review is exempt from the time standards in subdivisions (c) and (h). An exceptional case is not exempt from the time standard in subdivision (f), but case progress should be separately reported under the Regulations on Superior Court Reports to the Judicial Council.~~

(Subd (g) repealed effective January 1, 2004; adopted effective July 1, 1987; amended effective January 1, 1988, and July 1, 1991; relettered effective January 1, 1989.)

~~(h)~~(f) [~~Superior court~~ General civil cases—case~~/~~ disposition time goals] The goal of each trial court should be to manage general civil cases, except those exempt under (g), so that they meet the following case disposition time goals:

(1) *(Unlimited civil cases)* The goal of each trial court should be to manage unlimited civil cases from filing so that:

(A) 75 percent are disposed of within 12 months;

(B) 85 percent are disposed of within 18 months; and

(C) 100 percent are disposed of within 24 months.

(2) *(Limited civil cases)* ~~Effective July 1, 1991,~~ The goal of each ~~superior~~ trial court should be to manage ~~general~~ limited civil cases from filing ~~as follows~~ so that:

~~(1)~~(A) 90 percent are disposed of within 12 months~~, dispose of 90 percent~~;

~~(2)~~(B) 98 percent are disposed of within 18 months~~, dispose of 98 percent~~; and

~~(3)~~(C) 100 percent are disposed of within 24 months~~, dispose of 100 percent~~.

(3) *(Individualized case management)* The goals in (1) and (2) are guidelines for the court's disposition of all unlimited and limited civil cases filed in that court. In managing individual civil cases, the court must consider each case on its merits. To enable the fair and efficient resolution of civil cases, each case should be set for trial as soon as appropriate for that individual case consistent with rule 212(j).

(Subd (f) amended and relettered effective January 1, 2004; adopted as subd (g) effective July 1, 1987; relettered as subd (h) effective January 1, 1989; amended effective July 1, 1991.)

(g) [Exceptional civil cases] A general civil case that meets the criteria set out in rules 210 and 1800 and that involves exceptional circumstances or will require continuing review is exempt from the time standards in (d) and (f). Every exceptional case should be monitored to ensure its timely disposition consistent with the exceptional circumstances, with the goal of disposing of the case within three years.

(Subd (g) adopted effective January 1, 2004.)

(h) [Small claims cases] The goals for small claims cases are:

(1) 90 percent disposed of within 75 days after filing; and

(2) 100 percent disposed of within 95 days after filing.

(Subd (h) adopted effective January 1, 2004.)

(i) [Unlawful detainer cases] The goals for unlawful detainer cases are:

(1) 90 percent disposed of within 30 days after filing; and

(2) 100 percent disposed of within 45 days after filing.

(Subd (i) adopted effective January 1, 2004.)

(j) [Felony cases—processing time goals] Except for capital cases, all felony cases disposed of should have a total elapsed processing time of no more than one year from the defendant's first arraignment in any court to disposition.

(Subd (j) adopted effective January 1, 2004.)

(k) [Misdemeanor cases] The goals for misdemeanor cases are:

(1) 90 percent disposed of within 30 days after the defendant's first arraignment on the complaint;

(2) 98 percent disposed of within 90 days after the defendant's first arraignment on the complaint; and

(3) 100 percent disposed of within 120 days after the defendant's first arraignment on the complaint.

(Subd (k) adopted effective January 1, 2004.)

***(l)* [Felony preliminary examinations]** The goal for felony cases at the time of the preliminary examination (excluding murder cases in which the prosecution seeks the death penalty) should be disposition by dismissal, by interim disposition by certified plea of guilty, or by finding of probable cause, so that:

(1) 90 percent of cases are disposed of within 30 days after the defendant's first arraignment on the complaint;

(2) 98 percent of cases are disposed of within 45 days after the defendant's first arraignment on the complaint; and

(3) 100 percent of cases are disposed of within 90 days after the defendant's first arraignment on the complaint.

(Subd (l) adopted effective January 1, 2004.)

(m) [Exceptional criminal cases] An exceptional criminal case is not exempt from the time standard in (j), but case progress should be separately reported under the Judicial Branch Statistical Information System (JBSIS) regulations.

(Subd (m) adopted effective January 1, 2004.)

(n) [Cases removed from court's control excluded from computation of time] If a case is removed from the court's control, the period of time until the case is restored to court control should be excluded from the case disposition time standards. The matters that remove a case from the court's control for the purposes of this section include:

(1) Civil:

(A) The filing of a notice of conditional settlement under rule 225;

(B) An automatic stay resulting from the filing of an action in a federal bankruptcy court;

(C) The removal of the case to federal court;

(D) An order of a federal court or higher state court staying the case;

(E) An order staying the case based on proceedings in a court of equal standing in another jurisdiction;

(F) The pendency of contractual arbitration under Code of Civil Procedure section 1281.4;

(G) The pendency of attorney fee arbitration under Business and Professions Code section 6201;

(H) A stay by the reporting court for active military duty or incarceration; and

(I) For 180 days, the exemption for uninsured motorist cases under rule 207(c).

(2) Felony or misdemeanor:

(A) Issuance of warrant;

(B) Imposition of a civil assessment under Penal Code section 1214.1;

(C) Pendency of completion of diversion under Penal Code section 1000 et seq.;

(D) Evaluation of mental competence under Penal Code section 1368;

(E) Evaluation as a narcotics addict under Welfare and Institutions Code sections 3050 and 3051;

(F) 90-day diagnostic and treatment program under Penal Code section 1203.3;

(G) 90-day evaluation period for a juvenile under Welfare and Institutions Code section 707.2;

(H) Stay by a higher court or by a federal court for proceedings in another jurisdiction;

(I) Stay by the reporting court for active military duty or incarceration; and

(J) Time granted by court to secure counsel if the defendant is not represented at the first appearance.

(Subd (n) adopted effective January 1, 2004.)

(o) [Problems] A court that finds its ability to comply with these standards impeded by a rule of court or statute should notify the Judicial Council.

(Subd (o) adopted effective January 1, 2004.)

Sec. 2.1 amended effective January 1, 2004; adopted effective July 1, 1987; previously amended effective January 1, 1988, July 1, 1988, January 1, 1989, January 1, 1990, and July 1, 1991.

~~Section 2.3. Municipal court case disposition time standards~~

~~(a) [Time standards for municipal and justice courts]~~ ~~Each municipal and justice court should process its cases to meet the time standards in this section.~~

~~(b) [General civil cases]~~ ~~A general civil case is any civil case other than a small claims or unlawful detainer case. The goals for general civil cases are:~~

~~(1) 90 percent disposed of within 12 months after filing;~~

~~(2) 98 percent disposed of within 18 months after filing;~~

~~(3) 100 percent disposed of within 24 months after filing.~~

~~(c) [Small claims cases]~~ ~~The goals for small claims cases are:~~

~~(1) 90 percent disposed of within 70 days after filing;~~

~~(2) 100 percent disposed of within 90 days after filing.~~

~~(d) [Unlawful detainer cases]~~ ~~The goals for unlawful detainer cases are:~~

~~(1) 90 percent disposed of within 30 days after filing;~~

~~(2) 100 percent disposed of within 45 days after filing.~~

~~(e) [Misdemeanor cases]~~ ~~The goals for misdemeanor cases are:~~

~~(1) 90 percent disposed of within 30 days after the defendants' first court appearance;~~

~~(2) 98 percent disposed of within 90 days after the defendants' first court appearance;~~

~~(3) 100 percent disposed of within 120 days after the defendants' first court appearance.~~

~~(f) [Felony preliminary examinations]~~ ~~The goal for felony filings, excluding murder cases in which the prosecution seeks the death penalty, is disposition (by certified plea, finding of probable cause, or dismissal) of:~~

~~(1) 90 percent within 30 days after the defendants' first court appearance;~~

~~(2) 98 percent within 45 days after the defendants' first court appearance;~~

~~(3) 100 percent within 90 days after the defendants' first court appearance.~~

~~**(g) [Exclusion from computation of time in misdemeanor cases and felony preliminary examinations]** If a defendant is not represented by counsel at the first court appearance, any period of time granted by the court to secure counsel should be excluded from the case disposition time standards for misdemeanor cases under subdivision (e) and for felony preliminary examinations under subdivision (f).~~

~~**(h) [Purpose; problems]** The purpose of the time standards in this section is to improve the administration of justice by encouraging prompt disposition of all matters coming before the courts. These standards are not to be used as the basis for sanctions against any court or judge.~~

~~A court that finds its ability to comply with these standards impeded by a rule of court or statute should notify the Judicial Council.~~

Sec. 2.3 repealed effective January 1, 2004; adopted effective January 1, 1991; previously amended effective January 1, 1994, and January 1, 1996. The repealed section related to municipal court case-disposition time standards.

~~Section 2.4. General exclusions to case disposition time standards~~

~~If a case is removed from the court's control, as defined in the regulations for statistical reporting adopted by order of the Chairperson of the Judicial Council, the period of time until the case is restored to court control should be excluded from the case disposition time standards.~~

Sec. 2.4 repealed effective January 1, 2004; adopted effective January 1, 1996. The repealed section related to general exclusions to case-disposition time standards.

Sec. 8. Examination of prospective jurors in civil cases

(a) [In general]

(1) ***

(2) When counsel requests to be allowed to conduct a supplemental voir dire examination, the trial judge should permit counsel to conduct such examination without requiring prior submission of the questions to the judge unless a particular counsel has demonstrated unwillingness to avoid the type of examination proscribed in (f) of this section. In exercising his or her sound discretion as to the form and subject matter of voir dire questions, the trial judge should consider, among other criteria: (a) any unique or complex elements, legal or factual, in the case, and (b) the individual responses or conduct of jurors which may evince attitudes inconsistent with suitability to serve as a fair and impartial juror in the particular case. Questions regarding personal relationships of jurors should be relevant to the subject matter of the case.

(Subd (a) amended effective January 1, 2004; adopted effective January 1, 1972; previously amended effective January 1, 1974, and July 1, 1993.)

(b) ***

(c) [Examination of jurors] Except as otherwise provided in (d), the trial judge's examination of prospective jurors should include the following areas of inquiry and any other matters affecting their qualifications to serve as jurors in the case.

(1)–(11) *******

In the following questions I will be using the terms "family," "close friend," and "anyone with whom you have a significant personal relationship." The term, "anyone with whom you have a significant personal relationship" means a domestic partner, life partner, former spouse, or anyone with whom you have an influential or intimate relationship that you would characterize as important.

(12) *(If a corporation or "company" is a party)*

(i) Have ~~any of~~ you, or to your knowledge, any member of your family, ~~or~~ a close friend~~s~~, or anyone with whom you have a significant personal relationship, ever had any connection with, or any dealings with, the _____ corporation (or company)~~ to your knowledge~~?

(ii)–(v) *******

(13) Have ~~any of~~ you, or to your knowledge, any member of your family ~~or~~, a close friend~~s to your knowledge~~, or anyone with whom you have a significant personal relationship, ever sued anyone, or presented a claim against anyone, in connection with a matter similar to this case? (If so, did the matter terminate satisfactorily so far as you were concerned?)

(14) Has anyone ever sued ~~any of~~ you, or presented a claim against ~~any of~~ you, or to your knowledge, against any member of your family, ~~or~~ a close friend~~s~~, or anyone with whom you have a significant personal relationship, in connection with a matter similar to this case? (If so, did the matter terminate satisfactorily so far as you were concerned?)

(15) Are ~~any of~~ you, or to your knowledge, any member of your family, ~~or~~ a close friend~~s~~, or anyone with whom you have a significant personal relationship ~~to your knowledge~~, presently involved in a lawsuit of any kind?

(16) ***

(17) Have ~~any of~~ you, or to your knowledge, any member of your family, ~~or~~ a close friend~~s~~, or anyone with whom you have a significant personal relationship, had any special training in: (Describe briefly the fields of expertise involved in the case, such as law, medicine, nursing, or any other branch of the healing arts.)

(18) *(In personal injury or wrongful death cases)*

(i)–(ii) ***

(iii) Have ~~any of~~ you, or to your knowledge, any member of your family, ~~or~~ a close friend~~s~~, or anyone with whom you have a significant personal relationship ~~to your knowledge~~, ever engaged in investigating or otherwise acting upon claims for damages?

(iv)–(v) ***

(vi) Are there any of you who do not drive an automobile? (If so, have you ever driven an automobile, and if you have, give your reason for not presently driving.) ~~If you are married,~~ Does your spouse or anyone with whom you have a significant personal relationship drive an automobile? (If ~~your spouse~~ that person does not drive but did so in the past, why did ~~your spouse~~ they stop?)

(vii) Plaintiff (or cross-complainant) _____ is claiming injuries to his (or her): (Describe briefly the general nature of the alleged injuries.) Do ~~any of~~ you, or to your knowledge, does any member of your family, ~~or~~ a close friend~~s~~, or anyone with whom you have a significant personal relationship, ~~to your knowledge,~~ suffer from similar injuries? Have you or they, to your knowledge, suffered from similar injuries in the past? (If so, would that fact affect your point of view in this case to the extent that you might not be able to render a completely fair and impartial verdict?)

(19) ***

(20) Each of you should now state your:

(i) Name, ~~where you live, your marital status (whether married, single, widowed or divorced), the number and ages of your children if any, your occupational history, and the name of your present employer. If you are married, you should also describe briefly your spouse's occupational history and present employer if any.~~

(ii) Children's ages and the number of children, if any;

(iii) Occupation;

(iv) Occupational history; and

(v) Present employer.

And for your spouse or anyone with whom you have a significant personal relationship, their:

(vi) Names;

(vii) Occupations;

(viii) Occupational histories; and

(ix) Present employers.

Please begin with juror number one.

(21) ***

(Subd (c) amended effective January 1, 2004; adopted effective January 1, 1972; previously amended effective January 1, 1974.)

(d) [Examination of jurors in eminent domain cases] In eminent domain cases, the trial judge's examination of prospective jurors should include the areas of inquiry set forth in (c)(1) through (c)(12), the following areas, and any other matters affecting their qualifications to serve as jurors in the case:

(1) ~~To your knowledge,~~ Have ~~any of~~ you, or to your knowledge, any member of your family, ~~or~~a close friend~~s~~, or anyone with whom you have a significant personal relationship, ever had any connection with, or dealings with, the plaintiff agency? Are ~~any of~~ you or any of them related to any officer or employee of the plaintiff agency?

(2) ~~To your knowledge,~~ Have ~~any of~~ you, or to your knowledge, any member of your family, ~~or~~a close friend~~s~~, or anyone with whom you have a significant personal relationship, ever been involved in an eminent domain proceeding such as this or ~~will~~ likely to become involved in such a proceeding in the future?

(3) To your knowledge, do you have a~~ny~~ relative~~s, or~~ close friend~~s~~, or anyone with whom you have a significant personal relationship, who has ~~have~~been or will be affected by the proposed project or a similar public project? (If so, who and how affected?)

(4) Have ~~any of~~ you, or to your knowledge, any member of your family, ~~or~~a close friend~~s~~, or anyone with whom you have a significant personal relationship, ever sold property to a public agency having the power of eminent domain?

(5) Are ~~any of~~ you, or to your knowledge, any member of your family, ~~or~~a close friend~~s~~, or anyone with whom you have a significant personal relationship ~~to your knowledge~~, presently involved in a lawsuit of any kind? (If so, does the lawsuit involve a public agency?)

(6) Have ~~any of~~ you, or to your knowledge, any member of your family, ~~or~~a close friend~~s to your knowledge~~, or anyone with whom you have a significant personal relationship ~~to your knowledge~~, ever been involved in a lawsuit involving a public agency?

(7) ***

(8) Have ~~any of~~ you, or to your knowledge, any member of your family, ~~or~~a close friend~~s~~, or anyone with whom you have a significant personal relationship, had any special training in: (Describe briefly the fields of expertise involved in the case, such as law, real estate, real estate appraising, engineering, surveying, geology, etc.)

(9) Have you, ~~or~~ your spouse, or to your knowledge, any member of your family, a close friend, or anyone with whom you have a significant personal relationship, ever been engaged in any phase of the real estate business including:

(i)–(vi) ***

(10) Have you, or to your knowledge, any member of your family, ~~or any~~ a close friend, or anyone with whom you have a significant personal relationship, ever studied or engaged in: (State type of business, if any, conducted on subject property.)

(11) Have you, or to your knowledge, any member~~s~~ of your ~~immediate~~ family ~~or~~, a close friend~~s~~, or anyone with whom you have a significant personal relationship, ever been engaged in any work involving the acquisition of private property for public purposes? Or involving the zoning or planning of property?

(12)–(21) ***

(22) Are you, or to your knowledge, any member of your family, ~~or~~ a close friend~~s~~, or anyone with whom you have a significant personal relationship ~~to your knowledge~~, a member of any organization that is opposed to such public projects?

(23)–(27) ***

(28) Each of you should now state your:

(i) Name; ~~where you live, your marital status (whether married, single, widowed or divorced), the number and ages of your children if any, your occupational history, and the name of your present employer. If you are married, you should also describe briefly your spouse's occupational history and present employer if any.~~

(ii) Children's ages and number of children, if any;

(iii) Occupation;

(iv) Occupational history; and

(v) Present employer.

And for your spouse or anyone with whom you have a significant personal relationship, their:

(vi) Names;

(vii) Occupations;

(viii) Occupational histories; and

(ix) Present employers.

Please begin with juror number one.

(29) Each of you should now state whether you, ~~or~~ your spouse, or anyone with whom you have a significant personal relationship owns or has an interest in any real property and, if so, whether its value or use is affected by the public project involved in this case. We will again start with juror number one.

(30) ***

(Subd (d) amended effective January 1, 2004; adopted effective January 1, 1974; amended effective January 1, 1989.)

(e)–(f) ***

Sec. 8 amended effective January 1, 2004; adopted effective January 1, 1972; previously amended effective January 1, 1974, January 1, 1989, and July 1, 1993.

Sec. 8.5. Examination of prospective jurors in criminal cases

(a) ***

(b) [Examination of jurors] The trial judge's examination of prospective jurors in criminal cases should include the following areas of inquiry and any other matters affecting their qualifications to serve as jurors in the case:

(1)–(12) ***

In the following questions I will be using the terms "family," "close friend," and "anyone with whom you have a significant personal relationship." The term, "anyone with whom you have a significant personal relationship" means a domestic partner, life partner, former spouse, or anyone with whom you have an influential or intimate relationship that you would characterize as important.

(13) Have ~~any of~~ you, or to your knowledge, any member of your family, ~~or~~ a~~ny~~ close friend~~s~~, or anyone with whom you have a significant personal relationship ~~to your knowledge~~, ever been arrested for or charged with an offense similar to that in this case?

(14) Have ~~any of~~ you, or to your knowledge, any member of your family, ~~or~~ a~~ny~~ close friend~~s~~, or anyone with whom you have a significant personal relationship ~~to your knowledge~~, ever been a complaining witness or a victim in a case of this kind?

(15) Have ~~any of~~ you, or to your knowledge, any member of your family, ~~or~~ a~~ny~~ close friend~~s~~, or anyone with whom you have a significant personal relationship ~~to your knowledge~~, had any law enforcement training or experience or been a member of or been employed by any law enforcement agency? By law enforcement agency, I include any police department, sheriff's office, highway patrol, district attorney's office, city attorney's office, attorney general's office, United States attorney's office, FBI, etc.~~?~~ (If so, elicit the details of the experience or connection.)

(16)–(19) ***

(20) Each of you should now state your:

(i) Name; ~~where you live, your marital status (whether married, single, widowed or divorced), the number and ages of your children if any, your occupational history, and the name of your present employer. If you are married, you should also describe briefly your spouse's occupational history and present employer if any.~~

(ii) Children's ages and the number of children, if any;

(iii) Occupation;

(iv) Occupational history; and

(v) Present employer.

And for your spouse or anyone with whom you have a significant personal relationship, their:

(vi) Names;

(vii) Occupations;

(viii) Occupational histories; and

(ix) Present employers.

Please begin with juror number one.

(21)–(22) ***

(23) (When a new prospective juror is seated, the court should ask (him~~)~~/(~~h~~er)):

(i)–(iii) ***

(iv) Give us the personal information requested concerning your occupation, that of your spouse or anyone with whom you have a significant personal relationship, and your prior jury experience.

(Thereupon, as to each new juror seated, the court should ask counsel whether it has adequately covered the proper subjects of inquiry, ask such additional questions as the court determines are proper, and permit counsel, upon a showing of good cause, to ask supplemental questions, and proceed with challenges as above.)

(Subd (b) amended effective January 1, 2004; adopted effective July 1, 1974, as subd (c); amended and relettered effective June 6, 1990; previously amended effective January 1, 1997.)

(c) ***

Sec. 8.5 amended effective January 1, 2004; adopted effective July 1, 1974; previously amended effective January 1, 1988, January 1, 1990, June 6, 1990, and January 1, 1997.

~~Section 9. Policy regarding continuances in the superior court~~

~~To ensure the prompt disposition of civil cases, each superior court should adopt a firm policy regarding continuances, emphasizing that the dates assigned for a trial setting or pretrial conference, a settlement conference and for trial must be regarded by counsel as definite court appointments. Any continuance, whether contested or uncontested or stipulated to by the parties, should be applied for by noticed motion, with supporting declarations, to be heard only by the presiding judge or by a judge designated by him. No continuance otherwise requested should be granted except in emergencies. A continuance should be granted only upon an affirmative showing of good cause requiring the continuance. In general, the necessity for the continuance should have resulted from an emergency occurring after the trial setting conference that could not have been anticipated or avoided with reasonable diligence and cannot now be properly provided for other than by the granting of a continuance. In ruling on a motion for a continuance, the court should consider all matters relevant to a proper determination of the motion, including the court's file in the case and any supporting declarations concerning the motion; the diligence of counsel, particularly in bringing the emergency to the court's attention and to the attention of opposing counsel at the first available opportunity and in attempting to otherwise meet the emergency; the nature of any previous continuances, extensions of time or other delay attributable to any party; the proximity of the trial or hearing date; the condition of the court's calendar and the availability of an earlier trial or hearing date if the matter is ready for trial or hearing; whether the continuance may properly be avoided by the substitution of attorneys or witnesses, by the use of depositions in lieu of oral testimony, or by the trailing of the matter for trial or hearing; whether the interests of justice are best served by a continuance, by the trial or hearing of the matter, or by imposing conditions on its continuance; and any other fact or circumstance relevant to a fair determination of the motion. The following matters should, under normal circumstances, be considered good cause for granting the continuance of a trial date:~~

~~(1) Death:~~

~~(i) The death of the trial attorney or an essential witness where, because of the proximity of such death to the date of the trial, it is not feasible to substitute another attorney or witness.~~

~~(ii) The death of an expert witness where, because of the proximity of his death to the date of trial, there has been no reasonable opportunity for a substitute expert witness to become qualified to testify in the case.~~

(iii) The death of any other witness only where it is not possible to obtain another witness to testify to the same facts or where, because of the proximity of his death to the date of trial, there has been no reasonable opportunity to obtain such a substitute witness.

(2) Illness that is supported, wherever possible, by an appropriate declaration of a medical doctor, stating the nature of the illness and the anticipated period of any incapacity:

(i) The illness of a party or essential witness, except that, when it is anticipated the incapacity of such party or witness will continue for an extended period, the continuance should be granted on condition of taking the deposition of the party or witness in order that the trial may proceed on the next date set.

(ii) The illness of the trial attorney or of an expert witness, except that the substitution of another attorney or witness should be considered in lieu of a continuance depending on the proximity of the illness to the date of trial, the anticipated duration of the incapacity, the complexity of the case, and the availability of a substitute attorney or expert witness.

(iii) The illness of any other witness only where it is not possible to obtain another witness to testify to the same facts or where, because of the proximity of his illness to trial, there has been no reasonable opportunity to obtain such a substitute witness.

(3) Unavailability of trial attorney or witness:

(i) The unavailability of the trial attorney when he is engaged in the trial of another case, or in the hearing, investigative or formal, of a State Bar disciplinary matter, if: (a) at the time the attorney accepted the trial date in this case he could not have reasonably anticipated the conflict in trial dates; and (b) the court was informed and made a finding at the pretrial or trial setting conference or on motion made at least 30 days before the date set for trial that the case was assigned for trial to this attorney within a particular law firm and that no other attorney in that firm was capable and available to try the case and was or could be prepared to do so.

~~(ii) The unavailability of a witness only where the witness has been subpenaed or is beyond the reach of subpena and has agreed to be present, and his absence is due to an unavoidable emergency that counsel did not know and could not reasonably have known at the time of the pretrial or trial setting conference.~~

~~(4) Substitution of trial attorney:~~

~~The substitution of the trial attorney only where there is an affirmative showing that the substitution is required in the interests of justice.~~

~~(5) Significant change in status of case:~~

~~A significant change in the status of the case where, because of a change in the parties or pleadings ordered by the court, the case is not ready for trial.~~

Sec. 9 repealed effective January 1, 2004; adopted effective January 1, 1972; amended effective January 1, 1972, January 1, 1974, January 1, 1975, January 1, 1977, January 1, 1978, and January 1, 1985. The repealed section related to policy regarding continuances in the superior court.

Sec. 24. Juvenile Court Matters

(a)–(g) ***

(h) [Role of the juvenile court] The juvenile court should:

(1)–(2) *******

(3) Require that court reports, case plans, assessments, and permanency plans considered by the court address a child's educational entitlements and how those entitlements are being satisfied, and contain information to assist the court in deciding whether the right of the parent or guardian to make educational decisions for the child should be limited by the court under ~~Government Code section 7579.5~~ Welfare and Institutions Code section 361(a) or 726(b). Information concerning whether the school district has met its obligation to provide educational services to the child, including special educational services if the child has exceptional needs under Education Code section 56000 et seq., and to provide accommodations if the child has disabilities as defined in section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794; 34 C.F.R. § 104.1 et seq. (1980)) should also be included, along with a recommendation for

disposition.

(4) ***

(5) Make appropriate orders limiting the educational rights of a parent or guardian who cannot be located or identified, or who is unwilling or unable to be an active participant in ensuring that the child's ~~special~~ educational needs are met, and ~~request that the local education agency appoint a surrogate parent~~ appoint a responsible adult as educational representative for such a child or, if a representative cannot be identified and the child may be eligible for special education and related services or already has an individualized education program, use form JV-535 to refer the child to the local educational agency for special education and related services and prompt appointment of a surrogate parent. (Welf. & Inst. Code, §§ 361, 726; Ed. Code, § 56156; Gov. Code, § 7579.5.)

(6) ***

(Subd (h) amended effective January 1, 2004; adopted effective January 1, 2001.)

Sec. 24 amended effective January 1, 2004; adopted effective January 1, 1989; previously amended effective July 1, 1992, January 1, 1999; and January 1, 2001.

~~Section 24.6. Uniform standards of practice for court-connected child protection/dependency mediation~~

~~(a) [Purpose]~~ ~~This sets forth standards of practice and administration for court-connected dependency mediation services in accordance with Welfare and Institutions Code section 350.~~

~~(b) [Definitions]~~

~~(1) "Dependency mediation" is a confidential process conducted by specially trained, neutral third-party mediators who have no decision-making power. Dependency mediation provides a nonadversarial setting in which a mediator assists the parties in reaching a fully informed and mutually acceptable resolution that focuses on the child's safety and best interest and the safety of all family members. Dependency mediation is concerned with any and all issues related to child protection.~~

(2) "Safety and best interest of the child" refers to the child's physical, psychological, and emotional well-being. Determining the safety and best interest of the child includes consideration of the following:

(A) The ongoing need of the child to cope with the issues that caused his or her involvement in the juvenile dependency system;

(B) The preservation and strengthening of the family and family relationships whenever appropriate and possible;

(C) The manner in which the child may be protected from the risk of future abuse or neglect; and

(D) The child's need for safety, stability, and permanency.

(3) "Safety of family members" refers to the physical, psychological, and emotional well-being of all family members, with consideration of the following:

(A) The role of domestic violence in creating a perceived or actual threat for the victim and

(B) The ongoing need of family members to feel safe from physical, emotional, and psychological abuse.

(4) "Differential domestic violence assessment" is a process used to assess the nature of any domestic violence issues in the family so that the mediator may conduct the mediation in such a way as to protect any victim of domestic violence from intimidation and to correct for power imbalances created by past violence and feared prospective violence.

(c) [Responsibility for mediation services]

(1) Each court should ensure that:

(A) Dependency mediators are impartial, are competent, and uphold the standards of practice contained in this section;

(B) Dependency mediators maintain an appropriate focus on issues related to the child's safety and best interest and the safety of all family members;

(C) Dependency mediators provide a forum for all interested persons to develop a plan focused on the best interest of the child, emphasizing family preservation and strengthening and the child's need for permanency;

(D) Dependency mediation services and case management procedures are consistent with applicable state law without compromising each party's right to due process and a timely resolution of the issues;

(E) Dependency mediation services demonstrate accountability by:

(i) Providing for the processing of complaints about a mediator's performance and

(ii) Participating in any statewide and national data collection efforts;

(F) The dependency mediation program uses an intake process that screens for and informs the mediator about any restraining orders, domestic violence, or safety-related issues affecting the child or any other party named in the proceedings;

(G) Whenever possible, dependency mediation should be conducted in the shared language of the participants. When the participants speak different languages, interpreters, court-certified when possible, should be assigned to translate at the mediation session; and

(H) Dependency mediation services preserve, in accordance with pertinent law, party confidentiality, whether written or oral, by the:

(i) Storage and disposal of records and any personal information accumulated by the mediation program and

(ii) Management of any new child abuse reports and related documents.

(2) Each dependency mediator should:

(A) Assist the mediation participants in reaching a settlement of the issues that is consistent with preserving the safety and best interest of the child, first and foremost, and the safety of all family members and participants;

(B) Discourage participants from blaming the victim and from denying or minimizing allegations of child abuse or violence against any family member;

(C) Be conscious of the values of family preservation and strengthening as well as the child's need for permanency;

(D) Not make any recommendations or reports of any kind to the court, except as to the terms of any agreement reached by the parties;

(E) Treat all mediation participants in a manner preserving their dignity and self-respect;

(F) Ensure a safe and balanced environment for all participants to express and advocate their positions and interests;

(G) Identify and disclose potential grounds upon which a mediator's impartiality might reasonably be challenged through a procedure that allows for the selection of another mediator within a reasonable time. If a dependency mediation program has only one mediator and the parties are unable to resolve the conflict, the mediator should so inform the court;

(H) Identify and immediately disclose any reasonable concern regarding the mediator's continuing capacity to be impartial, through a procedure that allows the participants to explore the matter and determine whether the mediator should withdraw or continue;

(I) Ensure that all participants understand the status of the case in relation to the ongoing court process, what the case plan requires of them, and the terms of any agreement reached during the mediation; and

(J) Conduct appropriate review to evaluate the viability of any agreement reached, including the identification of any provision that depends on the action or behavior of any individual who did not participate in creating the agreement.

(d) [Mediation process] The dependency mediation process should be conducted in accordance with pertinent state laws, and all applicable rules of court, and should include local protocols. All local protocols should include the following:

(1) The process by which cases are sent to mediation, including:

(A) Who may request mediation;

(B) Who decides which cases are to be sent to mediation;

(C) Whether mediation is voluntary or mandatory;

(D) How mediation appointments are scheduled; and

(E) The consequences, if any, to a party who fails to participate in the mediation session.

(2) Identification of the participants in the mediation, according to the following guidelines:

(A) When at all possible, dependency mediation should include the direct and active participation of the parents, a representative of the child protective agency, and, at one stage or another, their respective attorneys.

(B) As appropriate, the child who is the subject of the proceeding, other family members, and any guardian ad litem, Court Appointed Special Advocate (CASA), or other involved person or professional may participate in the mediation.

(C) Any attorney who has not participated in the mediation should have an opportunity to review and agree to any proposal before it is submitted to the court for approval.

(D) A mediation participant who has been a victim of violence allegedly perpetrated by another mediation participant has the right to be accompanied by a support person. Unless otherwise invited or ordered to participate under the protocols developed by the court, such a support person may not actively participate in the mediation except to act as emotional support for the alleged victim.

(3) A means by which the mediator may review relevant case information before the mediation.

(4) A protocol for providing mediation in cases in which domestic violence or violence perpetrated by any other mediation participant has, or allegedly has, occurred. Such a protocol should include specialized

~~procedures designed to protect victims of domestic violence from intimidation by perpetrators.~~

~~The protocol should also appropriately address all family violence issues by encouraging the incorporation of appropriate safety and treatment interventions in any settlement. The protocol should include the following:~~

~~(A) A review of case-related information prior to commencing the mediation;~~

~~(B) The performance of a differential domestic violence assessment to determine the nature of the violence, for the purposes of:~~

~~(i) Assessing the ability of the victim to fully and safely participate and to reach a noncoerced settlement;~~

~~(ii) Clarifying the history and dynamics of the domestic violence issue in order to determine the most appropriate manner in which the mediation can proceed;~~

~~(iii) Assisting the parties, attorneys, and other participants in formulating an agreement following a discussion of appropriate safeguards for the safety of the child and family members;~~

~~(C) Structuring the mediation in a manner designed to meet the need of the victim of violence for safety and for full and noncoerced participation in the process, including:~~

~~(i) Giving the victim of violence the option of attending mediation sessions without the alleged perpetrator being present;~~

~~(ii) Permitting the victim to have a support person present during the mediation process, whether he or she elects to be seen separately from or together with the alleged perpetrator; and~~

~~(iii) Identifying the participants as provided in subdivision (d)(2) above.~~

~~(5) The provision of an oral or written orientation that facilitates participants' safe, productive, and informed participation and decision making by educating them about:~~

(A) How the mediation process is conducted, who generally participates in the sessions, the range of disputes that may be discussed, and what to expect at the conclusion of mediation;

(B) The mediator's role and any limitations on the confidentiality of the process; and

(C) The right of a participant who has been a victim of violence allegedly perpetrated by another mediation participant to be accompanied by a support person and to have sessions with the mediators separate from the alleged perpetrator.

(6) Protocols related to the inclusion of minors in the mediation, including:

(A) Criteria for determining whether or not a minor should participate in mediation, including the following:

(i) The age of the child;

(ii) The issues to be discussed at the mediation; and

(iii) The emotional stability of the child and his or her ability to participate without compromising his or her emotional well-being;

(B) A protocol for a child's involvement, in those cases in which a child participates in the mediation, including a requirement to explain the mediation process to a participating child in an age-appropriate way. The following information should be explained to the child:

(i) Any options available to the minor for his or her participation in the mediation;

(ii) What occurs during the mediation process;

(iii) The role of the mediator;

(iv) What the child may realistically expect from the mediation, and the limits on his or her ability to affect the outcome;

(v) Any limitations on the confidentiality of the process;

(vi) The child's absolute right to be accompanied, throughout the mediation, by his or her attorney and other support persons; and

(vii) The child's ability to take a break or terminate the mediation session if his or her emotional or physical well-being is threatened.

(7) Policy and procedures for scheduling follow-up mediation sessions.

(8) A procedure for suspending or terminating the process if the mediator determines that mediation cannot be conducted in a safe or an appropriately balanced manner or if any party is unable to participate in an informed manner for any reason, including fear or intimidation.

(9) A procedure for ensuring that each participant clearly understands any agreement reached during the mediation, as well as a procedure for presenting the agreement to the court for its approval. Such procedure should include the requirement that all parties and the attorneys participating in the agreement review and approve it and indicate their agreement in writing prior to its submission to the court.

(e) [Training and experience requirements for dependency mediators]
Dependency mediators should meet the following minimum qualifications:

(1) Possession of one or more of the following:

(A) A master's or doctoral degree in psychology, social work, marriage and family therapy, conflict resolution, or other behavioral science substantially related to family relationships, family violence, child development, or conflict resolution from an accredited college or university;

(B) A Juris Doctor degree with demonstrated experience in the field of juvenile or family law; or

(C) A background in mediation along with training and/or experience acceptable to the court to be served;

(2) At least three years of experience in mediation, counseling, psychotherapy, or any combination thereof, preferably in a setting related to juvenile dependency court or domestic relations and with the ethnic population to be served; or at least two years of experience as an attorney,

~~a referee, or a judicial officer, practicing in juvenile dependency court or domestic relations with the ethnic population to be served;~~

~~(3) Demonstrated knowledge of the juvenile court dependency system and the child welfare and protection systems, as well as the ability to interpret and apply laws, rules, regulations, and procedures as they relate to the dependency mediation court system and the process in which the mediations are conducted; and~~

~~(4) A minimum of 40 hours of mediation training and demonstrated ability to mediate multiparty, high-conflict cases.~~

~~**(f) [Substitution for training and experience requirements—subsequent training]** Those mediators who do not already possess dependency experience or training may substitute the completion of at least 24 hours of training within 12 months of employment, as follows:~~

~~(1) At least 16 hours of the training should cover the following subject areas:~~

~~(A) The dynamics of physical and sexual abuse, exploitation, emotional abuse, endangerment, and neglect of children, and their impacts on children;~~

~~(B) Child development and its relevance to the needs of children, to child abuse and neglect, and to child custody and visitation arrangements;~~

~~(C) The dynamics of domestic and family violence, its relevance to child abuse and neglect, and its effects on children and adult victims;~~

~~(D) Substance abuse and its impact on children;~~

~~(E) The roles and participation of parents, other family members, children, attorneys, guardians ad litem, the child welfare agency staff, Court Appointed Special Advocates (CASAs), law enforcement, mediators, the court, and other involved professionals and interested participants in the mediation process; and~~

~~(F) Dependency law.~~

~~(2) The remaining eight hours of required training may cover any of the topics above or any of the following:~~

~~(A) The dynamics of disclosure and recantation and of denial of child abuse and neglect;~~

~~(B) Adult and child psychopathology;~~

~~(C) The psychology of families, the dynamics of family systems, and the impacts of separation, divorce, and family conflict on children;~~

~~(D) Safety and treatment issues related to child abuse, neglect, and family violence;~~

~~(E) Available community resources for dealing with domestic and family violence; substance abuse; and housing, educational, medical, and mental health needs in addition to related services for families in the juvenile dependency system, such as regional centers;~~

~~(F) The impacts that the mediation process can have on children's well-being and behavior, and when and how to involve children in mediation;~~

~~(G) Methods to assist parties in developing options for different parenting arrangements that consider the needs of children and each parent's capacity to parent;~~

~~(H) Awareness of differing cultural values, including the dynamics of cross-generational cultural issues;~~

~~(I) The Americans with Disabilities Act, its requirements, and strategies for handling situations involving disability issues or special needs;~~

~~(J) The effect on family dynamics of removal or nonremoval of children from their homes and family members, including the related implications for the mediation process;~~

~~(K) The effect of poverty on family dynamics and parenting; and~~

~~(L) An overview of the special needs of dependent children, including their educational, medical, and psychosocial needs as well as the resources available to meet those needs.~~

~~**(g) [Volunteers, interns, or paraprofessionals]** Dependency mediation programs may use volunteers, interns, or paraprofessionals as mediators, but only if they work with a professional mediator who is qualified to act as a professional~~

dependency mediator as described in subdivision **(**e) of this standard. Any such volunteers, interns, or paraprofessionals should be exempt from the minimum qualification standards numbered **(**e)2 and 3 above.

(h) [Substitution for education or experience] The juvenile dependency court may substitute additional experience for a portion of the education, or additional education for a portion of the experience, required by subdivisions **(**e) and **(**f) above.

(i) [Continuing education requirements for mediators and mediation supervisors] All dependency mediators, mediation supervisors, and program coordinators and directors should participate in at least 15 hours per year of continuing instruction designed to enhance mediation skills and techniques, including at least 5 hours specifically related to the issue of family violence.

(j) [Ethics/standards of conduct] Mediators should**:**

(1) Meet the practice and ethical standards of the applicable code of ethics for court employees.

(2) Maintain objectivity, provide information to and gather information from all parties, and control for bias.

(3) Protect the confidentiality of all parties, including the child. Mediators should not release information or make any recommendations about the case to the court or to any individual except as compelled by statute (for example, the requirement to make mandatory child abuse reports or reports to authorities regarding threats of harm and/or violence). Any limitations to confidentiality should be clearly explained to all mediation participants before any substantive issues are discussed in the mediation session.

(4) Decline to provide legal advice.

(5) Strive to maintain the confidential relationship between any family member or the child and his or her treating counselor, including the confidentiality of any psychological evaluations.

(6) Consider the health, safety, welfare, and best interest of the child and the safety of all parties and other participants in all phases of the process, and encourage the formulation of settlements preserving these values.

~~(7) Operate within the limits of his or her training and experience, and disclose any limitations or bias that would affect his or her ability to conduct the mediation.~~

~~(8) Not require the child to state a preference for placement.~~

~~(9) Disclose to the court, to any participant, and to his or her attorney any conflicts of interest or dual relationships, and not accept any referral except by court order or the parties' stipulation. In the event of a conflict of interest, the mediator should suspend mediation and meet and confer in an effort to resolve the conflict of interest either to the satisfaction of all parties or according to local court rules. The court may order mediation to continue with another mediator or offer the parties an alternative method of resolving the issues in dispute.~~

~~(10) Not knowingly assist the parties in reaching an agreement that would be unenforceable for a reason such as fraud, duress, illegality, overreaching, absence of bargaining ability, or unconscionability.~~

~~(11) Protect the integrity of the mediation process by terminating the mediation when a party or participant has no genuine interest in resolving the dispute and is abusing the process.~~

~~(12) Terminate any session in which an issue of coercion, inability to participate, lack of intention to resolve the issues at hand, or physical or emotional abuse during the mediation session is involved.~~

~~**Advisory Committee Comment**~~

~~**2001** These standards are consistent with the manual *Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases* and related recommendations of the National Council of Juvenile and Family Court Judges.~~

Sec. 24.6 repealed effective January 1, 2004; adopted effective January 1, 2001. The repealed section related to uniform standards of practice for court-connected child protection/dependency mediation.

Section 25.4. Judicial education for judges hearing a capital case

(a) The California Center for Judicial Education and Research (CJER) should provide a comprehensive curriculum and periodic updates for training on California law and procedure relevant to capital cases. The periodic update may be provided through actual classroom instruction or through video, audio, or other media as determined by CJER.

(b) A judge assigned to a capital case should attend the comprehensive training specified in (a) before commencement of the trial. A judge with a subsequent assignment to a capital case, the judge should complete the periodic update course described in (a) within two years before the commencement of the trial.

Sec. 25.4 adopted effective January 1, 2004.